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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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J.M., a minor by and through
her Guardian ad Litem, Nancy
Morin-Teal, and NANCY MORIN-
TEAL, an individual,

Plaintiffs,

v.

PLEASANT RIDGE UNION SCHOOL
DISTRICT, ALLIANCE REDWOODS
OUTDOOR RECREATION, COUNTY OF
NEVADA, and DOES 1 to 50,

Defendants.

CIV. NO.: 2:16-00897 WBS CKD

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

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Plaintiffs Nancy Morin-Teal and J.M. filed this action
against defendants Pleasant Ridge School District ("Pleasant
Ridge"), Alliance Redwoods Conference Grounds ("Alliance
Redwoods"), and the County of Nevada for a violation of the
Rehabilitation Act and related state law claims arising out of
J.M.'s involvement as a student at Magnolia Intermediate School
("Magnolia"). The matter is now before the court on Alliance

1 Redwoods' motion to dismiss the First Amended Complaint ("FAC")
2 for failure to state a claim upon which relief can be granted
3 pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket
4 No. 29.)

5
6 I. Factual and Procedural Background

7 J.M. is a disabled minor who attends Magnolia, a
8 subordinate public entity of Pleasant Ridge. (First Am. Compl.
9 ("FAC") ¶¶ 7, 11 (Docket No. 2).) Plaintiffs allege defendants
10 had prior knowledge of all of J.M.'s disabilities prior to the
11 events at issue. (Id. ¶ 16.)

12 Plaintiffs allege Pleasant Ridge required J.M. to
13 participate in a camp at Alliance Redwoods for school. (Id. ¶¶
14 14-15.) Alliance Redwoods is a non-profit organization that
15 provides environmental skills. (Id. ¶ 15.) Prior to the trip,
16 J.M.'s mother, Morin-Teal, allegedly worked with defendants to
17 create a written care plan for J.M. during the trip. (Id. ¶ 16.)
18 Plaintiffs allege J.M.'s physician gave written orders that J.M.
19 could not be exposed to direct sunlight. (Id. ¶ 18.)

20
21 During the trip to Alliance Redwoods, defendants
22 allegedly forced J.M. to stay in direct sunlight for 9.5 hours,
23 despite J.M.'s protests. (Id. ¶¶ 19-20.) Plaintiffs allege
24 defendants gave J.M. Tylenol, told her to lie down, and did not
25 provide a nurse as promised. (Id. ¶¶ 16, 21.) J.M. allegedly
26 suffered second degree burns, heat exhaustion, heat stroke,
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1 permanent damage to her internal organs, emotional distress, and
2 post-traumatic stress syndrome. (Id. ¶ 24.)

3 Plaintiffs initiated this action and on October 11,
4 2016, the court granted, in part, Pleasant Ridge's motion to
5 dismiss. (Oct. 11, 2016 Order ("Oct. 11 Order") 10:8-13 (Docket
6 No. 19).) Plaintiffs filed their FAC on October 31, 2016,
7 alleging: (1) discrimination under Section 504 against Pleasant
8 Ridge; (2) negligent supervision against all defendants; (3)
9 intentional infliction of emotional distress against all
10 defendants; and (4) discrimination under the Americans with
11 Disabilities Act ("ADA") against Alliance Redwoods. (FAC at 7-
12 11.) Alliance Redwoods now moves to dismiss plaintiffs' FAC for
13 failure to state a claim upon which relief can be granted.
14

15 II. Discussion

16 On a motion to dismiss under Rule 12(b)(6), the court
17 must accept the allegations in the complaint as true and draw all
18 reasonable inferences in favor of the plaintiff. Scheuer v.
19 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
20 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.
21 319, 322 (1972). To survive a motion to dismiss, a plaintiff
22 must plead "only enough facts to state a claim to relief that is
23 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
24 544, 570 (2007). "The plausibility standard is not akin to a
25 'probability requirement,' but it asks for more than a sheer
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1 possibility that a defendant has acted unlawfully.” Ashcroft v.
2 Iqbal, 556 U.S. 662, 678 (2009). “A claim has facial
3 plausibility when the plaintiff pleads factual content that
4 allows the court to draw the reasonable inference that the
5 defendant is liable for the misconduct alleged.” Id. Under this
6 standard, “a well-pleaded complaint may proceed even if it
7 strikes a savvy judge that actual proof of those facts is
8 improbable.” Twombly, 550 U.S. at 556.

10 “Threadbare recitals of the elements of a cause of
11 action, supported by mere conclusory statements, do not suffice.”
12 Iqbal, 556 U.S. at 678; see also Iqbal, 556 U.S. at 679 (“While
13 legal conclusions can provide the framework of a complaint, they
14 must be supported by factual allegations.”).

16 A. Intentional Infliction of Emotional Distress

17 In their third and fourth causes of action, plaintiffs
18 allege defendants intentionally inflicted emotional distress upon
19 J.M. and Morin-Teal. (FAC at 9.) The elements of intentional
20 infliction of emotional distress are: “(1) extreme and outrageous
21 conduct by the defendant with the intention of causing, or
22 reckless disregard of the probability of causing, emotional
23 distress; (2) the plaintiff’s suffering severe or extreme
24 emotional distress; and (3) actual and proximate causation of the
25 emotional distress by the defendant’s outrageous conduct.”

27 Christensen v. Superior Court, 54 Cal. 3d 868, 904 (1991)

1 (citations omitted). Alliance Redwoods argues that plaintiffs
2 improperly refer to defendants generally when alleging both
3 intentional infliction of emotional distress causes of action and
4 plaintiffs do not allege any intentional or reckless conduct by
5 Alliance Redwoods specifically. (Def.'s Mot. 6:8-13.)

6
7 A defendant is entitled to know what actions a
8 plaintiff alleges it engaged in that supports the plaintiff's
9 claims. See Sollberger v. Wachovia Sec., LLC, No. SACV 09-0766
10 AG (ANx), 2010 WL 2674456, *4-5 (C.D. Cal. June 30, 2010) ("One
11 common type of shotgun pleading comes in cases with multiple
12 defendants where the plaintiff uses the omnibus term 'Defendants'
13 throughout a complaint by grouping defendants together without
14 identifying what the particular defendants specifically did
15 wrong."). Failure to delineate conduct by a specific defendant
16 prevents the court from drawing the reasonable inference that the
17 specific defendant is liable for the claim alleged and justifies
18 dismissal of the claim. See id. at *5 ("This shotgun pleading
19 style deprives Defendants of knowing exactly what they are
20 accused of doing wrong. . . . [T]his defect alone warrants
21 dismissal."); see also Pryzblyski v. Stumpf, No. CV-10-8073-PCT-
22 GMS, 2011 WL 31194, *4 (D. Ariz. Jan. 5, 2011) ("The Complaint is
23 drafted in such a way as to deprive any remaining Defendant of
24 the knowledge of what claims and factual allegations the
25 Complaint asserts against it."); Turney v. Fifth Third Bank, No.
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1 09-2533-JWL, 2010 WL 1744670, at *6 (D. Kan. Apr. 29, 2010)
2 (finding general allegations regarding defendants, without
3 identifying conduct by specific defendants, did not provide
4 defendants with sufficient notice of claims against them).

5 Plaintiffs fail to allege any misconduct by Alliance
6 Redwoods specifically in support of their intentional infliction
7 of emotional distress claims. Plaintiffs' allegations regarding
8 J.M.'s intentional infliction of emotional distress claim, her
9 exposure to sunlight at Alliance Redwoods, and her inability to
10 contact her mother during the trip all refer to "defendants"
11 generally and not Alliance Redwoods. (See FAC ¶¶ 14-20.)
12 Plaintiffs' allegations regarding Morin-Teal's intentional
13 infliction of emotional distress claim also refer to "defendants"
14 generally. (See id. ¶¶ 23, 57.) "By failing to specify the
15 defendant responsible for each act at issue, [Alliance Redwoods]
16 cannot reasonably respond to [plaintiffs'] allegations in a
17 precise manner" and plaintiffs' claim cannot survive.

18 Autobidmaster, LLC v. Alpine Auto Gallery, LLC, No. 3:14-CV-1083-
19 AC, 2015 WL 2381611, at *15 (D. Or. May 19, 2015).

20 Plaintiffs fail to allege intentional or reckless
21 conduct by Alliance Redwoods as distinct from Pleasant Ridge.
22 Thus, the FAC does not allow the court to draw the inference that
23 Alliance Redwoods is liable for the alleged misconduct or
24 intentional infliction of emotional distress claims.
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1 Accordingly, the court must grant Alliance Redwoods' motion to
2 dismiss plaintiffs' third and fourth causes of action for
3 intentional infliction of emotional distress.

4 B. Americans with Disabilities Act

5 In their fifth cause of action, plaintiffs allege
6 Alliance Redwoods violated the ADA when it discriminated against
7 J.M. on the basis of her disability. (FAC at 10.)

8 Congress enacted the ADA "to remedy widespread
9 discrimination against disabled individuals." PGA Tour, Inc. v.
10 Martin, 532 U.S. 661, 674 (2001). Title III of the ADA prohibits
11 places of public accommodation from discriminating against
12 disabled individuals by preventing them from "full and equal
13 enjoyment" of the services provided. 42 U.S.C. § 12182(a). To
14 prevail on a Title III claim, a plaintiff must show that: "(1) he
15 is disabled within the meaning of the ADA; (2) the defendant is a
16 private entity that owns, leases, or operates a place of public
17 accommodation; and (3) the plaintiff was denied public
18 accommodations by the defendant because of his disability."

19 Ariz. ex rel. Goddard v. Harkins Amusement Enters., Inc., 603
20 F.3d 666, 670 (9th Cir. 2010). Alliance Redwoods' motion to
21 dismiss centers on the third prong--whether plaintiffs allege
22 that Alliance Redwoods discriminated against J.M. on account of
23 her disability.
24 her disability.

25 "The third element--whether [a plaintiff is] denied
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1 public accommodations on the basis of disability--is met if there
2 was a violation of applicable accessibility standards." Johnson
3 v. Wayside Prop. Inc., 41 F. Supp. 3d 973, 976 (E.D. Cal. 2014)
4 (alteration in original) (quoting Moeller v. Taco Bell Corp., 816
5 F. Supp. 2d 831, 847 (N.D. Cal. 2011)). "[T]he barrier need only
6 interfere with the plaintiff's 'full and equal enjoyment' of the
7 facility." Moeller, 816 F. Supp. 2d at 849 (quoting 42 U.S.C. §
8 12182(a)).

9
10 Plaintiffs allege that Alliance Redwoods denied J.M.
11 full and equal enjoyment of its facilities because "the staff was
12 untrained and even fearful about having a student in their camp
13 with disabilities. By failing to ensure that their staff
14 understood J.M.'s disability and the importance of first aid and
15 summoning medical assistance, the Defendants left J.M [sic]
16 without the supports necessary to participate with her peers
17 equally." (FAC ¶ 63.) Plaintiffs further allege that the
18 defendants did not provide a reasonable accommodations--"no
19 exposure to direct sunlight"--and that the defendants "knew that
20 J.M. would not be able to meaningfully access the benefits" of
21 Alliance Redwoods absent these accommodations. (Id. ¶¶ 64-65.)

22
23 Plaintiffs' allegations are conclusory and do not
24 mention a single activity or service that Alliance Redwoods
25 excluded J.M. from due to her disability. J.M.'s allegation that
26 defendants left her "without the supports necessary to
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1 participate with her peers equally” does not depict what specific
2 service or activity J.M. could not fully participate in, as
3 required under the ADA. (FAC ¶ 63); see 42 U.S.C. § 12182(a).
4 Plaintiffs do not allege that Alliance Redwoods violated any
5 applicable accessibility standard or that J.M. was, as a result
6 of a policy or practice of Alliance Redwoods, prevented from full
7 and equal enjoyment of Alliance Redwoods’ services. See Fortyune
8 v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1085 (9th Cir. 2004)
9 (holding that a written policy preventing a movie theater from
10 requiring a patron to move seats discriminated against a disabled
11 wheelchair patron); Johnson, 41 F. Supp. 3d at 976.

12
13 Plaintiffs do not allege with sufficient particularity
14 that Alliance Redwoods denied J.M. full and equal enjoyment of
15 its services because of J.M.’s disability. Accordingly, the
16 court must grant Alliance Redwoods’ motion to dismiss J.M.’s
17 fifth cause of action for violation of the ADA.

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19 C. Negligent Supervision

20 In their seventh cause of action, plaintiffs allege
21 Alliance Redwoods is liable for negligent supervision of J.M.
22 (FAC at 11.) “[I]n order to prevail in a negligence action,
23 plaintiffs must show that defendants owed them a legal duty, that
24 defendants breached that duty, and that the breach proximately
25 caused their injuries.” Wiener v. Southcoast Childcare Ctrs.,
26 Inc., 32 Cal. 4th 1138, 1145 (2004).
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1 Alliance Redwoods argues that plaintiffs do not allege
2 facts indicating Alliance Redwoods had a duty to supervise J.M.
3 as distinct from the duty owed by Pleasant Ridge. (Def.'s Mot.
4 9:4-9.) In the court's October 11 Order, the court denied
5 Pleasant Ridge's motion to dismiss the negligent supervision
6 cause of action because plaintiffs alleged that Pleasant Ridge
7 negligently supervised J.M. in violation of California Government
8 Code section 815.2 and Pleasant Ridge is a public entity subject
9 to that section that also owes a special duty of care to prevent
10 injury to its students, and California law has long imposed a
11 duty on school officials to supervise children. (Oct. 11, Order
12 4:27-6:1.) In contrast, plaintiffs' sole allegation regarding
13 Alliance Redwoods' duty to supervise J.M. in the FAC is that
14 "[d]efendants owed a duty to Plaintiffs to exercise reasonable
15 care supervising J.M." (FAC ¶ 69.) Such a threadbare recital of
16 Alliance Redwoods' duty to supervise, "supported by mere
17 conclusory statements, do[es] not suffice." Iqbal, 556 U.S. at
18 678.


21 Plaintiffs do not allege facts with sufficient
22 particularity that indicate Alliance Redwoods had a duty to
23 supervise J.M. Accordingly, the court must grant Alliance
24 Redwoods' motion to dismiss J.M.'s seventh cause of action for
25 negligent supervision.
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27 IT IS THEREFORE ORDERED that Alliance Redwoods' motion
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1 to dismiss plaintiffs' third, fourth, fifth, and seventh causes
2 of action as to Alliance Redwoods be, and the same hereby are,
3 GRANTED.

4 Plaintiffs have twenty days from the date this Order is
5 signed to file a Second Amended Complaint, if they can do so
6 consistent with this Order.
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8 Dated: January 10, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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