

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 KEAREAN HUBBARD,

7 Plaintiff,

No. C 12-6380 PJH

8 v.

**ORDER GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND**

9 COUNTY OF SONOMA, et al.,

10 Defendants.  
11 \_\_\_\_\_/

12 Defendants County of Sonoma and Steve Freitas's ("the County defendants") motion  
13 to dismiss the first three causes of action of plaintiff's first amended complaint came on for  
14 hearing before this court on March 6, 2013. Plaintiff Kearean Hubbard ("plaintiff") appeared  
15 through her counsel, Charles Applegate and Michael Scott. The County defendants  
16 appeared through their counsel, Terry Sterling. Having read the papers filed in conjunction  
17 with the motion and carefully considered the arguments and the relevant legal authority,  
18 and good cause appearing, the court hereby GRANTS the County defendants' motion, for  
19 the reasons stated at the hearing, and summarized as follows.

20 In their motion, the County defendants argued that, in order to assert a section 1983  
21 claim against a public entity (such as the County of Sonoma), plaintiff is required to allege  
22 that the constitutional violation was the result of the government's established policy or  
23 practice. Monell v. Dept. of Social Services, 436 U.S. 658, 691 (1978). And in order to  
24 assert a section 1983 claim against an individual government employee, plaintiff is required  
25 to allege that the employee participated in or directed the violations, or knew of the  
26 violations and failed to act to prevent them. See, e.g., Taylor v. List, 880 F.2d 1040, 1045  
27 (9th Cir. 1989). Plaintiff did not file an opposition to the motion. The court agrees that  
28 plaintiff's section 1983 claims (the first, second, and third causes of action in the first

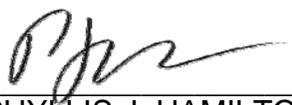
1 amended complaint) do not meet the relevant pleading standards, and hereby DISMISSES  
2 them with leave to amend.

3 While plaintiff did not oppose the motion, she did file an amended complaint, styled  
4 as the “second amended complaint,” on March 5, 2013 (i.e., the day before the scheduled  
5 hearing on the County defendants’ motion). Plaintiff was not entitled to file this second  
6 amended complaint under the federal rules, which allow a party to “amend its pleading  
7 once as a matter of course.” Fed. R. Civ. P. 15(a)(1) (emphasis added). Plaintiff had  
8 already filed a first amended complaint (which was the subject of this motion) on January  
9 23, 2013. Thus, the second amended complaint (Dkt. 16) is hereby STRICKEN.

10 Plaintiff may file an amended complaint (which shall be styled as the “revised  
11 second amended complaint”) in accordance with this order by **April 3, 2013**. No new  
12 claims or parties may be added without leave of court or agreement of the parties.  
13 Defendants shall have until **April 24, 2013** to answer or otherwise respond to the  
14 complaint. Plaintiff is further cautioned that, if she wishes to assert section 1983 claims  
15 against the County or its employees, she must comply with the relevant pleading standards  
16 for those claims. She may not simply include those defendants as “Doe” defendants in an  
17 effort to evade the applicable pleading standards.

18 **IT IS SO ORDERED.**

19 Dated: March 6, 2013

  
\_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge

20  
21  
22  
23  
24  
25  
26  
27  
28