IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARVETTE WILLIAMS, Plaintiff, v. DAKOTA COUNTY BOARD OF COMMISSIONERS, DAKOTA COUNTY DEPARTMENT OF CORRECTIONS, RODNEY HERRON, in his official capacity and personally, COUNTY OF DAKOTA, NEBRASKA, and JAMES L. WAGNER, Dakota County Sheriff in his official capacity and personally, Defendants.	)	8:09CV201 MEMORANDUM AND ORDER

This matter is before the court on the motion to dismiss and/or strike filed by defendants Dakota County Board of Commissioners, Dakota County Department of Corrections, James L. Wagner and Rodney Herron, Filing No. 39. This is an action for discrimination in employment.

I. Background

In her amended complaint, the plaintiff Charvette Williams asserts claims for race discrimination under 42 U.S.C. §§ 1981 & 1983 and gender discrimination under 42 U.S.C. § 1983 and 42 U.S.C. § 2000e ("Title VII"). Filing No. 20, Amended Complaint. Specifically, she alleges that defendants discriminated against her by paying her less than similarly situated white male counterparts and treating her differently with respect to work assignments. *Id.* at 3-4. She also alleges that she was subjected to a hostile work environment. Williams alleges that a superior officer, Rodney Herron, engaged in a "predatory sexual relationship" with her. *Id.* at 4. She also alleges that the defendants created a work environment in which "superiors took advantage of their position of power for

their own sexual gratification." *Id.* at 5. Williams further alleges that Sheriff James L. Wagner and Williams's supervisor, Defendant Rodney Herron, had numerous sexual relationships with other employees, resulting in favorable treatment of those employees, to the detriment of Williams. *Id.* at 5, 11. She alleges that Dakota County was on notice of the behavior, acquiesced in it, and took no steps to correct it. *Id.* at 6, 12. She further alleges that she was retaliated against for pursuing her right to be free from discrimination in pay. *Id.* at 4-5. She asserts that defendants' actions were willful and wanton and seeks punitive damages.[1] *Id.* at 16. Williams also alleges that she has satisfied prerequisites to filing this action and has received a right to sue letter from the EEOC. *Id.* at 3.

In their motion, the defendants move to dismiss Williams's amended complaint in its entirety for failure to comply with the "short and plain statement" provision of Fed. R. Civ. P. 8(a)(2), or, in the alternative, to strike certain statements in the amended complaint for violation of the rule or as irrelevant, repetitive, and/or scandalous under Fed. R. Civ. P. 12(f). Defendants further move to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Defendants Board of Commissioners and Department of Corrections assert they are not entities properly subject to suit. Defendants also assert that Williams has failed to exhaust administrative remedies under a collective bargaining agreement.

II. Discussion

A. Law

Under Fed. R. Civ. P. 12(f), courts may strike "from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P.

[1]Though framed as a separate claim, a request for punitive damages is properly viewed as part of Williams's prayer for relief. In her response to the defendants' motion, Williams states that she agrees that Dakota County and the defendants in their official capacities "cannot be sued and are immune from punitive damages." Filing No. 48, Response at 2. The court will consider Williams's claim for punitive damages to have been abandoned with respect to those defendants.

12(f). Courts enjoy liberal discretion to strike pleadings under this provision. *BJC Health System v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007). Striking a party's pleading, however, is an extreme and disfavored measure. *Id.* A motion to strike, is neither an authorized nor a proper way to procure the dismissal of all or part of a claim. 5C Wright & Miller, Fed. Prac. & Proc. § 1380 (2008).

Under the Federal Rules, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Rules require a "'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 n.3. (2007) (quoting Fed. R. Civ. P. 8(a)(2)). "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555). In order to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Erickson*, 551 U.S. at 94. This is so, "even if it appears that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Twombly*, 550 U.S. at 556. The complaint must plead "enough facts to state a claim for relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (stating that the plausibility standard does not require a probability, but asks for more than a sheer possibility that a defendant has acted unlawfully). The court must find "enough factual matter (taken as true) to suggest" that

"discovery will reveal evidence" of the elements of the claim. *Twombly*, 550 U.S. at 556. "[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief," the complaint should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Id.* at 558; *Iqbal*, 129 S. Ct. at 1950 (stating that "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'").

The Civil Rights Act, 42 U.S.C. § 1981, as amended in 1991, gives all persons the equal right to "make and enforce contracts" and provides a cause of action "for discrimination in the employment relationship." *King v. Hardesty*, 517 F.3d 1049, 1057 n.4 (8th Cir. 2008). The prohibition on racial discrimination in § 1981 covers retaliation claims and hostile environment claims. *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, —, 128 S. Ct. at 1955 (2008); *Greer v. St. Louis Reg'l Med. Ctr.*, 258 F.3d 843, 847 (8th Cir. 2001). A § 1981 claim against a public employer must be asserted through § 1983. *Artis v. Francis Howell North Band Booster Ass'n, Inc.*, 161 F.3d 1178, 1181 (8th Cir. 1998); *Jackson v. City of St. Louis*, 220 F.3d 894, 897 (8th Cir. 2000) (noting that claims under § 1981, § 1983, and Title VII represent "alternative theories of recovery for the same injuries").

Plaintiffs' "right to be free from gender discrimination is secured by the equal protection clause of the Fourteenth Amendment." *Tipler v. Douglas County, Neb.*, 482 F.3d 1023, 1027 (8th Cir. 2007); *Ottman v. City of Independence*, 341 F.3d 751, 756 (8th Cir. 2003) ("intentional gender discrimination in public employment by persons acting under color of state law violates the Equal Protection Clause of the Fourteenth Amendment"). Equal protection claims may be asserted under 42 U.S.C. § 1983. *See, e.g., Mercer v. City of Cedar Rapids*, 308 F.3d 840, 844 (8th Cir. 2002). Discrimination based on gender that creates a hostile or abusive working environment also violates § 1983. *Weger v. City of Ladue*, 500 F.3d 710, 171 (8th Cir. 2007) (hostile work environment claims under Title VII

and § 1983 are subject to the same analysis). To state a claim for hostile environment discrimination, an employee must show: (1) she belongs to a protected group; (2) she was subject to unwelcome harassment: (3) the harassment was based on race or disability; (4) the harassment affected a term, condition, or privilege of employment; and (5) her employer knew or should have known of the harassment and failed to take proper remedial action. *McCown v. St. John's Health System, Inc.*, 349 F.3d 540, 542 (8th Cir. 2003).

Under 42 U.S.C. § 2000(e), the timely filing of a charge of discrimination with the EEOC is a prerequisite to the later commencement of a civil action in federal court. *Cobb v. Stringer*, 850 F.2d 356, 358 (8th Cir. 1988). The purpose of filing the charge is to provide the EEOC with an opportunity to investigate and attempt to resolve the controversy through conciliation before permitting the aggrieved party to pursue a lawsuit. *Id.* at 359. A Title VII plaintiff must also receive a "right to sue" letter from the EEOC in order to exhaust her remedies. *Shannon v. Ford Motor Co.*, 72 F.3d 678, 684 (8th Cir. 1996).

Government entities are not liable under section 1983 for an employee's actions under a theory of respondeat superior, but the county may be liable if the plaintiff can prove an official policy or a widespread custom that violated the law and caused the plaintiff's injury. *See Artis*, 161 F.3d at 1181. Locating a "policy" ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality. *Board of County Comm'rs of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403-04 (1997). "[A]n act performed pursuant to a 'custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law." *Id.* at 404 (citing *Monell v. Dep't of Soc. Serv. of City of New York*, 436 U.S. 668, 690-91 (1978).

Under section 1983, to establish liability against a defendant in his individual capacity, because vicarious liability is inapplicable to § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution. *Parrish v. Ball*, 2010 WL 445736, *6 (8th Cir. Feb. 10, 2010); *Ashcroft v. Iqbal*, 129 S. Ct. at 1948. "Thus, 'each Government official, his or her title notwithstanding, is only liable for his or her own misconduct.'" *Parrish* at *6 (quoting *Iqbal*, 129 S. Ct. at 1949). A supervising officer can be liable for an inferior officer's constitutional violation only if he directly participated in the constitutional violation, or if his failure to train or supervise the offending actor caused the deprivation. *Parrish* at *7; *Ottman v. City of Independence, Mo.*, 341 F.3d 751, 761 (8th Cir. 2003) (stating that the supervisor must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what [he or she] might see). A supervisor is not liable in his individual capacity under Title VII. *Roark v. City of Hazen, Arkansas*, 189 F.3d 758, 761 (8th Cir. 1999).

B. Analysis

The court finds that Williams's amended complaint states a plausible claim for race discrimination under section 1981, gender discrimination under § 1983, and race discrimination, gender discrimination and retaliation under Title VII. In her amended complaint, Williams alleges disparate pay by reason of race and gender. She alleges a claim for sexual harassment and for a hostile work environment. She alleges facts showing she was treated differently than similarly-situated male employees with respect to work assignments and pay and further alleges conduct that is severe or pervasive enough that a reasonable person would find it hostile or abusive. Williams alleges conduct by defendants Wagner and Herron that would give rise to individual liability.

Although Williams presents sufficient allegations that the acts of Wagner and Herron were official policies or customs, the Dakota County Department of Corrections and the

Dakota County Board of Commissioners are not entities that are subject to suit under § 1983. *See* *Williams v. Pulaski County Detention Facility*, 278 Fed. Appx. 695, 695 (8th Cir. 2008) (unpublished opinion); *De La Garza v. Kandiyohi County Jail, Correctional Inst.*, 18 Fed. Appx. 436, 437 (8th Cir. 2001). The proper defendant is the county. Accordingly, the defendants' motion to dismiss the Dakota County Department of Corrections and the Dakota County Board of Commissioners will be granted.

Consideration of the defendants' arguments that the relationship was consensual and that Williams's remedies are affected by a collective bargaining agreement is not appropriate at this time. The court considers only the allegations that appear on the face of the amended complaint. Accordingly, the court finds the defendants' motion should be denied in all other respects.

IT IS ORDERED that:

1. The defendants' motion to dismiss or strike is granted in part and denied in part.

2. The defendants' motion to dismiss is granted with respect to defendants Dakota County Board of Commissioners and Dakota County Department of Corrections, and denied in all other respects.

3. Defendants shall file a responsive pleading within 10 days thereafter.

DATED this 10th day of March, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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