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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARYLIN J. TAYLOR,

Plaintiff,

v.

KANTI MANI, et al.,

Defendants.

CASE NO. C10-1472JLR

ORDER

I. INTRODUCTION

This matter is before the court on Defendants Kanti Mani and Elizabeth Gregory Home's motion to dismiss Plaintiff Marylin J. Taylor's complaint based on lack of subject matter jurisdiction, insufficient process and service of process, and failure to state a claim upon which relief can be granted (Dkt. # 7), as well as Ms. Taylor's motions for leave to amend her amended complaint (Dkt. # 10) and to amend service (Dkt. # 11). The court has considered the motions, all submissions filed in support of and opposition to each motion, as well as all of the pleadings on file. No party has asked for oral

1 argument, and the court deems these motions appropriate for disposition without oral
2 argument. For the reasons stated below, the court GRANTS Defendants motion to
3 dismiss (Dkt. # 7), and DENIES Ms. Taylor's motions to amend her complaint and to
4 amend service (Dkt. ## 10 & 11).

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 On September 13, 2010, Ms. Taylor filed a *pro se* civil rights complaint for
7 damages under 42 U.S.C. § 1983. (Compl. (Dkt. # 3).) On October 7, 2010, the court
8 issued an order to show cause why the complaint should not be dismissed for lack of
9 subject matter jurisdiction. (Order (Dkt. # 4).) In its order, the court explained that Ms.
10 Taylor had not alleged that either of the defendants, Ms. Mani or Elizabeth Gregory
11 House, were state actors, and that purely private conduct is not actionable under 42
12 U.S.C. § 1983. (Order at 3 (citing *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50
13 (1999).) In the alternative, the court ordered Ms. Taylor to file an amended complaint
14 which provided a basis for federal subject matter jurisdiction on its face. (Order at 4.)

15 In response to the court's order, Ms. Taylor filed an amended complaint on
16 October 22, 2010. (Am. Compl. (Dkt. # 6).) Ms. Taylor's amended complaint contains
17 three new paragraphs of largely unintelligible legal analysis (*id.* at ¶¶ 3.2-3.4), but no
18 new factual allegations, and no new claims for relief. Indeed, the remainder of Ms.
19 Taylor's amended complaint is nearly identical to her original complaint. In both her
20 complaint and amended complaint, Ms. Taylor alleges that a shelter for homeless women
21 located in the basement of a church, as well as employees or volunteers of the shelter,
22 treated her unfairly by, among other things, falsely accusing her of theft, permanently

1 | barring her from the facility, touching her food, and preventing her from using the
2 | kitchen facilities at the shelter. In both her original and amended complaint, Ms. Taylor
3 | seeks compensatory damages in the amount of \$10,000, and punitive damages in the
4 | amount of \$10,000. The only specific claim cited by Ms. Taylor in either complaint is a
5 | violation of her civil rights under 42 U.S.C. § 1983.

6 | On November 9, 2010, Defendants filed a motion to dismiss Ms. Taylor’s
7 | complaint for lack of subject matter jurisdiction on the same grounds as stated in the
8 | court’s order to show cause. (Mot. (Dkt. # 7) at 4-5.) Defendants also moved for
9 | dismissal on grounds that (1) service of the amended complaint by registered mail,
10 | unaccompanied by a summons, and (2) service of a deficient summons, unaccompanied
11 | by the original complaint, were both insufficient under Federal Rules of Civil Procedure
12 | 4 and 5. (*Id.* at 5-9.) Defendants also argued that the complaint should be dismissed for
13 | failure to state a claim under 42 U.S.C. § 1983. (*Id.* at 9-10).

14 | Ms. Taylor responded to Defendants’ motion to dismiss by filing a motion for
15 | leave to amend her complaint (Dkt. # 10), as well as a motion for leave to amend service
16 | (Dkt. # 11).

17 | **III. ANALYSIS**

18 | **A. Motion to Dismiss Amended Complaint**

19 | As previously noted in the court’s order to show cause, “the mere mention of 42
20 | U.S.C. § 1983 . . . does not establish jurisdiction where the complaint on its face discloses
21 | the absence of an essential element of such a claim.” *Grayson v. Schriro*, No. CIV 05-
22 | 1749 PHX RCB, 2007 WL 91611, at *8 (D. Ariz. Jan. 11, 2007) (quoting *Rushdan v.*

1 | *Hale*, No. C02-1325TEH(PR), 2002 WL 981863, at *1 (N.D. Cal. May 7, 2002)). To
2 | state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
3 | right secured by the United States Constitution or the laws of the United States was
4 | violated, and (2) that the violation was committed by a person acting under color of state
5 | law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

6 | Private actors, such as the nongovernmental defendants named here, can be said to
7 | act under color of state law only if their conduct is fairly attributable to the state. *See*
8 | *West*, 487 U.S. at 49; *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974)
9 | (actions by a private party are deemed state action if “there is a sufficiently close nexus
10 | between the State and the challenged action” that the actions of the private persons “may
11 | be fairly treated as that of the State itself.”). Even allowing Ms. Taylor the special
12 | solicitude due *pro se* litigants, Ms. Taylor does not plead any facts in either her original
13 | or amended complaint that would support a reasonable inference that Defendants are state
14 | actors, that Defendants acted under color of state law, or that Defendants’ conduct is
15 | fairly attributable to the State.

16 | While our Constitution guarantees many rights, access to shelter is not one of
17 | them, nor is there any government obligation to provide housing. *See Lindsey v. Normet*,
18 | 405 U.S. 56, 74 (1972). As this court has previously stated, the provision of services to
19 | the homeless by a private organization, even where subject to governmental regulation,
20 | does not render that organization or its employees state actors. *See Vargas v. Salvation*
21 | *Army*, 649 F. Supp. 763, 768 (N.D. Ill. 1986) (concluding that the Salvation Army did not
22 | perform a state function in caring for the sick and elderly, even when operating under the

1 regulation of the state); *Williams v. Crawford*, No. 88-CV-80 (TCP), 1988 WL 52198
2 (E.D.N.Y. 1988) (ruling that state regulation and state funding would be insufficient to
3 render private residential treatment center or its employees state actors under § 1983); *see*
4 *also Rendell-Bake v. Kohnr*, 457 U.S. 830, 842 (1982) (“That a private entity performs a
5 function which serves the public does not make its acts state action.”). Thus, even
6 liberally construed, and given special solicitude in light of Ms. Taylor’s *pro se* status, Ms.
7 Taylor’s amended complaint fails to allege any state action, and thus both fails to state a
8 claim under 42 U.S.C. § 1983 claim, and also fails to provide the court with a basis for
9 federal subject matter jurisdiction.

10 Further, even if Ms. Taylor’s amended complaint could be construed to allege
11 state causes of action, federal subject matter jurisdiction would still be lacking because
12 there is no basis for the court to exercise diversity jurisdiction. Ms. Taylor alleges that all
13 parties reside in King County, Washington. (Am. Compl. at ¶¶ 1.1-1.2, 2.1.) She also
14 alleges a total of \$20,000 in damages, including compensatory and punitive. (*Id.* at ¶¶
15 5.1-5.2.) Diversity jurisdiction does not exist where the plaintiff and defendants are all
16 citizens of the same state, and where it appears from the face of the complaint that the
17 amount in controversy is less than \$75,000. *See* 28 U.S.C. § 1332. The court, therefore,
18 grants Defendants’ motion to dismiss Ms. Taylor’s amended complaint on grounds that it

1 fails to state a claim under 42 U.S.C. § 1983, and consequently also fails to establish a
2 basis for the exercise of federal subject matter jurisdiction.¹

3 **B. Motion to Amend**

4 Ms. Taylor did not file a formal response to Defendants’ motion to dismiss.
5 Instead, she filed a separate motion for leave to amend her amended complaint. (Mot. to
6 Amend (Dkt. # 10).)² In her motion to amend, Ms. Taylor acknowledges that “her
7 original and her first amended complaint carries [sic] defects.” (*Id.* at 5.) Accordingly,
8 she seeks leave to amend her amended complaint. (*See generally id.*) Ms. Taylor states
9 that she would like to amend her complaint to state the “correct federal statutes,”
10 “identify each of the named defendants in their respectful positions,” and to “set forth the
11 violation of Plaintiff’s federal constitutional rights.” (*Id.* at 3.) However, Ms. Taylor
12 fails to state what additional facts she intends to plead that could cure the jurisdictional
13 defects that she has acknowledged are contained in both her original and amended
14 complaint.

15 *Pro se* complaints are to be construed liberally and may be dismissed for failure to
16 state a claim only where it appears beyond doubt that the plaintiff can prove no set of
17 facts in support of her claim which would entitle her to relief. *Weilburg v. Shapiro*, 488

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19 ¹ Because the court grants Defendants motion to dismiss the amended complaint for
20 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and for lack of subject
21 matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the court need not decide
22 Defendants’ motions to dismiss under Federal Rules of Civil Procedure 12(b)(4) and 12(b)(5) for
insufficient service of process of the amended complaint and for insufficient process and service
of process of the original complaint. (*See Mot.* at 5-9.)

² Because Ms. Taylor is proceeding *pro se*, the court construes her motion to amend as a
timely response to Defendants’ motion to dismiss as well.

1 F.3d 1202, 1205 (9th Cir. 2007). Dismissal of a *pro se* complaint without leave to amend
2 is proper only if it absolutely clear that the deficiencies of the complaint could not be
3 cured by amendment. *Id.*

4 Here, Ms. Taylor has been apprised not once, but twice, concerning the subject
5 matter jurisdiction deficiencies in her complaint and amended complaint: once by the
6 court's order to show cause, and a second time by Defendants' motion to dismiss. (*See*
7 *Order & Mot.*) Although she filed an amended complaint in response to the court's order
8 to show cause, she did so without adding or altering a single substantive factual
9 allegation. The only substantive difference in the amended complaint is three new
10 paragraphs, which contain nothing more than a confusing array of legal assertions and
11 conclusions. (*See Am. Compl. at ¶¶ 3.2-3.4.*) They add no new factual allegations. (*See*
12 *id.*) As such, they are not entitled to the assumption of truth afforded all well-pled factual
13 allegations, and are insufficient to defeat Defendants' motion to dismiss. *Halkin v.*
14 *VeriFone Inc. (In re Verifone Sec. Litig.)*, 11 F.3d 865, 868 (9th Cir. 1993)
15 (“[C]onclusory allegations of law . . . are insufficient to defeat a motion to dismiss for
16 failure to state a claim.”).

17 Further, Ms. Taylor's present motion for leave to amend fails to describe how she
18 plans to amend her amended complaint to state a valid claim or to provide the court with
19 subject matter jurisdiction. (*See generally Mot. to Amend.*) Because Ms. Taylor has
20 already failed once to successfully amend her complaint after being apprised by the court
21 concerning its specific deficiencies, and because she has failed to explain how she would,
22 if granted leave, amend her amended complaint to address the same issues presented by

1 Defendants’ motion to dismiss, it is clear that granting her leave to amend again would be
2 futile. *See, e.g., Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2nd Cir. 2000) (finding leave to
3 replead following dismissal was properly denied where *pro se* plaintiff, through counsel
4 on appeal, suggested no new material she wished to plead); *Alsaifullah v. Travis*, 160 F.
5 Supp. 2d 417, 421 (E.D.N.Y. 2001) (denying leave to amend given that amended
6 complaint provided *pro se* plaintiff a second opportunity to plead sufficiently the facts
7 supporting his § 1983 claim). Thus, the court denies her motion to amend.

8 **C. Motion to Amend Service**

9 Finally, Ms. Taylor has also moved for leave to amend service. The court notes
10 that, except for the bald statement that “Plaintiff had some defects in her initial service,”
11 Ms. Taylor has filed nothing in support of her motion – neither a legal memorandum, nor
12 factual declarations or support. In any event, because the court has already ruled that Ms.
13 Taylor’s complaint and amended complaint should be dismissed for lack of subject
14 matter jurisdiction, and because the court has denied her motion to amend her amended
15 complaint, the court denies Ms. Taylor’s motion to amend service as moot.

16 **IV. CONCLUSION**

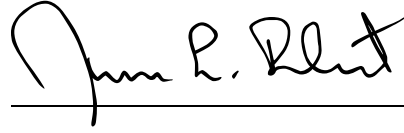
17 For the foregoing stated reasons, the court GRANTS Defendants’ motion to
18 dismiss (Dkt. # 7), and DENIES Ms. Taylor’s motions to amend her amended complaint
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1 and to amend service (Dkt. ## 10 & 11).

2 Dated this 11th day of January, 2011.

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A handwritten signature in black ink, appearing to read "James L. Robart". The signature is written in a cursive style with a large initial "J".

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JAMES L. ROBART
United States District Judge

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