IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

**BRENDA JOYCE LITTLE**,

Plaintiff,

vs.

**HARIUM MARTIN-MORRIS**, in his personal and official capacity, **MICHAEL DEBELL**, in his private and official capacity, **PETER MAIER**, in his private and official capacity, **SHERRY CARR**, in her personal and official capacity, **STEVE LUNDQUIST**, in his private and official capacity, **ROB MCKENNA**. in his private capacity only, **MARIA GOOD-LOE JOHNSON**, in her private and official capacity, **STEVEN O'TOOLE & the BOARD OF GOVERNORS**, in their individual and official capacities, **MATTHEW WACKER, OHA**, in his private and official capacity, and **CYNTHIA MINTER, OHA**, in her private and professional capacity, **RANDY BEITEL, WSBA**, in his private and official capacity, **JANICE SHAVE**, in her private and official capacity,

NO. C11-91-GK

OPINION AND ORDER

**CLOVER PARK SCHOOL BOARD**, in its private and official capacities, **& JANE AND JOHN DOES 1-25**,

Defendants.

KING, Judge:

Plaintiff Brenda Little, an attorney representing herself, brings this action against members of the Board of Directors and the Superintendent of the Seattle Public Schools (collectively, the "District Defendants"), among several others. Little alleges constitutional claims concerning her overall allegation that defendants have subjected her, "a black woman and a current descendant of former slaves, to an extention [sic] of slavery and involuntary servitude." Compl. ¶ 31. Before the court is the District Defendants' FRCP 12(b)(6) Motion to Dismiss [12]. For the reasons below, I grant the motion and allow Little to file an Amended Complaint.

## ALLEGATIONS

In the introduction of the Complaint, Little alleges that defendants violated the Thirteenth Amendment; Article III, Section 2 of the Constitution; 42 U.S.C. §§ 1981, 1983, and 1985; the Declaration of Independence; and the Universal Declaration of Independence.

Concerning the District Defendants, Little alleges that in 2009, the Board had Regulatory Hearing Officers Wacker, Mintzer, and Shave (who are also defendants) remove her, because of conflicts of interests, from two special education cases in which she was plaintiff's counsel. Little previously worked for the Seattle Public Schools. Prior to her removal, Little had worked exorbitant hours to prepare for the due process hearings. Little alleges that the District Defendants imposed involuntary servitude on her in violation of the Thirteenth Amendment

because she was not paid for her work on these cases, and she was never retained in another special education case.

## LEGAL STANDARDS

A motion to dismiss under Rule 12(b)(6) will be granted if plaintiff fails to allege the "grounds" of his "entitlement to relief." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007) (quotation omitted). The Court elaborated on Twombly in Ashcroft v. Iqbal, __ U.S. __, 129 S. Ct. 1937 (2009):

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Id., at 570, 127 S. Ct. 1955. 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. Id., at 556, 127 S. Ct. 1955. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id., at 557, 127 S. Ct. 1955 (brackets omitted).

Id. at 1949 (quoting Twombly). The court should not accept as true allegations which are legal conclusions. Id. at 1949-50.

## DISCUSSION

In her response, Little moves to dismiss all claims against defendant Kay Blume-Smith and Dr. Douglas Gill. I grant Little's request and dismiss all claims alleged against Blume-Smith and Gill without prejudice.

Turning to the District Defendants' motion, both sides veer off track. Little included several pages from an auditor's report of the District, and the District used Little's arguments to

contend that Little is only alleging claims against the District Defendants in their official capacities. My analysis below is based strictly on the allegations in the Complaint.

Little's Complaint is long, filled with extraneous factual allegations, and difficult to parse concerning which claims she alleges against which defendants. I am going to allow Little to amend her complaint, and I address some of the District Defendants' arguments to provide her some guidance. These issues apply to the claims Little alleged against all defendants.

First, Little alleges claims against the District Defendants in both their personal and official capacities. Officials sued in their individual capacities are "persons" for purposes of § 1983 and may be personally liable for their conduct. Hafer v. Melo, 502 U.S. 21, 23, 112 S. Ct. 358 (1991). Officials sued in their official capacities are not persons subject to liability under § 1983. Such suits are treated as suits against the government entity. Id. at 22-23, 25. A municipality may be held liable under § 1983 if its official's conduct was the result of a municipal policy or custom. Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005) (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691-694, 98 S. Ct. 2018 (1978)). A school board is a municipality under § 1983. See Thelma D v. Bd. of Educ. of City of St. Louis, 934 F.2d 929 (1991).

> There are three ways to show a policy or custom of a municipality: (1) by showing a longstanding practice or custom which constitutes the standard operating procedure of the local government entity; (2) by showing that the decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision; or (3) by showing that an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate.

Menotti, 409 F.3d at 1147 (internal quotation omitted).

Little argues that the school board has the habit, custom, or policy of not following the law. This is much too vague to satisfy the pleading standard set forth in Twombly. In the Amended Complaint, Little should carefully consider whether she should even attempt to allege a claim against the school board. The gist of her allegations against the school board members are more in the nature of a personal vendetta, which should be alleged as a claim against each member in his or her personal capacity.

Second, it is unclear which defendants Little seeks to hold liable under § 1981, or on which contracts she bases the claim. If the claim is alleged against municipal entities, Little must show a policy or custom, just as in the § 1983 claim. Fed'n of African Am. Contractors v. City of Oakland, 96 F.3d 1204, 1215 (9th Cir. 1996).

Third, the Thirteenth Amendment states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Little alleges that many of the defendants conspired to have her removed from cases on which she had worked for three years, thus subjecting her to involuntary servitude. Involuntary servitude in violation of the Thirteenth Amendment "occurs when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor." Brogan v. San Mateo Cnty, 901 F.2d 762, 763 (9th Cir. 1990) (work program for those on public assistance did not violate Thirteenth Amendment) (internal quotation omitted).

Little does not allege that anyone forced her into their service. Based on the story brought forth in the Complaint, I doubt that she can allege a Thirteenth Amendment claim. If anything,

her claim is more in the nature of tortious interference, namely, that defendants improperly meddled in Little's contracts with her clients. See Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship, 242 P.3d 1 (Wash. Ct. App. 2010).

In summary, I ask Little to carefully consider what claims to allege. I remind her that she will have to fulfill the technical requirements of each claim, something she is trained to do through her education in and practice of the law.

Moreover, I require Little to comply with the provisions of Federal Rule of Civil Procedure 8 under which a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The Complaint is much more difficult to understand than it needs to be due to the pages of extraneous details and unnecessary background facts. Little should clearly divide her claims by legal theory and carefully state which claims are alleged against which defendants. The use of the generic "defendants" in the Complaint makes it difficult for both the court and the defendants to understand who is allegedly liable under each legal theory.

**CONCLUSION**

The District Defendants' FRCP 12(b)(6) Motion to Dismiss [12] is granted. Little may file an Amended Complaint by June 20, 2011. If she fails to do so, I will dismiss this action in its entirety.

IT IS SO ORDERED.

Dated this 25th day of May, 2011.

/s/ Garr M. King
Garr M. King
United States District Judge