

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

H.G. et al.,

Plaintiffs,

v.

CASE NO. 4:18cv100-RH/CAS

MIKE CARROLL,

Defendant.

_____ /

**ORDER DENYING THE MOTION TO DISMISS
OR FOR A MORE DEFINITE STATEMENT**

This case presents a constitutional challenge to the manner in which the Florida Department of Children and Families operates its foster-care system. The plaintiffs are children in foster care in the Department's custody. The defendant is the Secretary of the Department in his official capacity. The plaintiffs seek declaratory and injunctive relief under 42 U.S.C. § 1983.

The Secretary has moved to dismiss for failure to state a claim on which relief can be granted. Alternatively, the Secretary asks for a more definite statement. This order denies the motion.

I

To survive a motion for failure to state a claim, a plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For purposes of a motion to dismiss, the complaint’s factual allegations, though not its legal conclusions, must be accepted as true. *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A motion to dismiss is not the vehicle by which the truth of a plaintiff’s factual allegations should be judged. Instead, it remains true, after *Twombly* and *Iqbal* as before, that “federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later.” *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168-69 (1993).

II

The Secretary does not deny that the plaintiffs have adequately alleged a violation of their constitutional rights. But the Secretary asserts that as an official-capacity defendant, he can be held liable only if “some policy or custom is the ‘moving force’ behind” the constitutional violations. Mot. to Dismiss, ECF No. 23 at 2. The Secretary asserts that the complaint does not adequately identify a policy or custom.

That is incorrect. The complaint alleges with unmistakable clarity that the Department routinely treats children this way. The complaint attributes this to structural deficiencies. A practice that is followed routinely, for child after child, is a policy or custom. Indeed, the Eleventh Circuit has said that as few as “several incidents” can establish “precisely the type of informal policy or custom that is actionable under section 1983.” *Depew v. City of St. Marys, Ga.*, 787 F.2d 1496, 1499 (11th Cir. 1986) (upholding a verdict for the plaintiffs). Other courts have recognized that an entity’s recurring treatment of foster children may reflect a policy or custom. *See Woodburn v. Fla. Dep’t of Children & Family Servs.*, 854 F. Supp. 2d 1184, 1201 (S.D. Fla. 2011); *Jordan v. D.C.*, 949 F. Supp. 2d 83, 88 (D.D.C. 2013); *Taylor v. D.C.*, 840 F. Supp. 2d 348, 354 (D.D.C. 2012).

The Secretary cannot escape declaratory and injunctive relief under § 1983 for routinely violating the constitutional rights of hundreds of foster children—if that is what occurred—simply on the ground that the Secretary has not precisely articulated a policy requiring that result or that the plaintiffs have failed to discern the precise policy.

In due course it may turn out that the Secretary has a policy or custom that denies the constitutional rights of foster children. Or it may turn out that the Secretary does not have such a policy or custom. This is not an issue that can properly be resolved on the Secretary’s motion to dismiss.

III

The Secretary does not need a more definite statement. The complaint includes extensive detail. The Secretary can learn more about the plaintiffs' claims through discovery. The plaintiffs should expect to respond in full and on time to contention interrogatories or other appropriate discovery probing the basis of the plaintiffs' claims.

IV

For these reasons,

IT IS ORDERED:

The Secretary's motion to dismiss or alternatively for a more definite statement, ECF No. 23, is denied.

SO ORDERED on April 17, 2018.

s/Robert L. Hinkle
United States District Judge