

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-00737-MSK-KLM

KEITH PARKER,

Plaintiff,

v.

MR. ARELLANO,
CAPTAIN HALL,
MR. LEONARD VIGIL,
MR. DAVID M. ZUPAN,
MRS. D. WEBSTER,
LT. MCCORMICK,
MR. ENREQUIZ,
LT. PIPER,
MRS. SUSAN JONES,
MRS. JILL HOGGARTH,
MR. DR. [sic] MCHAUD, and
LT. ROBERT STEINBECK,

Defendant(s).

**ORDER GRANTING PLAINTIFF LEAVE TO FILE
SECOND FINAL AMENDED COMPLAINT**

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion to Correct an Error Supplemental [sic] Pleadings Instead of Amended Pleadings** [Docket No. 137; Filed March 9, 2009] ("Plaintiff's Motion") and Defendants' **Motion for Enlargement of Time to Answer or Otherwise Respond to the Final Amended Complaint** [Docket No. 133; March 9, 2009] ("Defendants' Motion"). On February 24, 2009, the Court granted Plaintiff leave to amend his complaint and accepted Plaintiff's tendered Final Amended Complaint for filing [Docket Nos. 123 & 124]. Although the Court directed that no further amendments would be permitted, Plaintiff has informed the Court that he erroneously deleted the

previously-named Defendants and the claims asserted against them set forth in his previous operative pleading [Docket No. 16]. He seeks to proceed by combining his previous operative complaint with the Final Amended Complaint. Although he proposes that one pleading could merely supplement the other, I find that the presence of two, independent operative complaints on the docket would be confusing and inefficient. However, given that Plaintiff is proceeding *pro se*, and the liberal standard this Court uses to determine whether amendment is appropriate, I find that final amendment of Plaintiff's complaint is appropriate. Accordingly,

IT IS HEREBY **ORDERED** that Plaintiff's Motion [#137] is **GRANTED** with the following modification. On or before **April 6, 2009**, Plaintiff shall file a "**SECOND FINAL AMENDED COMPLAINT.**" The Second Final Amended Complaint shall contain (at a minimum), a case caption; a list of parties; a statement of jurisdiction; a summary of his alleged injuries; a list of separately-numbered claims, including the alleged individuals responsible for his injuries and the alleged constitutional rights implicated regarding each claim; a prayer for relief; and Plaintiff's signature. More specifically, the Second Final Amended Complaint shall fully and clearly identify:

- (1) every claim Plaintiff seeks to pursue and the legal basis therefor;
- (2) the names of the individuals Plaintiff seeks to sue as Defendants; and
- (3) the role each named Defendant allegedly played related to the injuries complained of in Plaintiff's claims.

IT IS FURTHER **ORDERED** that Plaintiff shall file his Second Final Amended Complaint on the Court's Prisoner Complaint form.

IT IS FURTHER **ORDERED** that the Clerk of Court shall mail to Plaintiff two copies

of the following form: Prisoner Complaint.

IT IS FURTHER **ORDERED** that to aid Plaintiff in drafting the Second Final Amended Complaint, the Clerk of Court shall mail to Plaintiff the previous operative complaint [#16] and the Final Amended Complaint [#124]. **Plaintiff shall limit himself to the claims and parties asserted in those pleadings and shall not attempt to add any new claims or defendants that were not previously asserted in one of those pleadings.**

IT IS FURTHER **ORDERED** that **no further amendment or supplementation of Plaintiff's complaint will be permitted**, and the Second Final Amended Complaint shall operate as the operative pleading as of the date of its filing. Claims or parties not contained in the Second Final Amended Complaint will be deemed waived for purposes of this case only. **Plaintiff's failure to file a Second Final Amended Complaint by April 6, 2009 shall operate as a waiver of any claims or parties not contained in his current Final Amended Complaint [#124].**

Due to my Order permitting Plaintiff to file a Second Final Amended Complaint,

IT IS HEREBY **ORDERED** that Defendants' Motion [#133] is **GRANTED** with the following modification. Defendants shall answer or otherwise respond to Plaintiff's Second Final Amended Complaint within **ten (10) days** of the date of its filing or, if none is filed, by **April 20, 2009**.

IT IS FURTHER **ORDERED** that the Scheduling Conference set for March 27, 2009 at 9:30 a.m. is **vacated** and **RESET** to **May 4, 2009 at 10:30 a.m.** in Courtroom C-204, Second Floor, Byron G. Rogers United States Courthouse, 1929 Stout Street, Denver,

Colorado. The parties need not comply with the requirements of Fed. R. Civ. P. 16 and 26(a)(1) and D.C. COLO.LCivR. 16.1 and 16.2. The purpose of the conference is to consider the nature and status of the case, the timing for filing of any motions or responses, and what discovery, if any, will be needed. Plaintiff and his case manager shall contact the court at: **(303) 335-2770** on the above date and time in order to participate.

IT IS FURTHER **ORDERED** that the evidentiary hearing regarding Plaintiff's Motion for Injunctive Relief [#81] set for April 6, 2009 at 1:30 p.m. is **vacated** and **RESET** to **May 15, 2009 at 10:00 a.m.** in Courtroom C-204, Second Floor, Byron G. Rogers United States Courthouse, 1929 Stout Street, Denver, Colorado. Plaintiff and his case manager shall contact the court at: **(303) 335-2770** on the above date and time in order to participate.

Dated: March 16, 2009

BY THE COURT:

s/ Kristen L. Mix
U.S. Magistrate Judge