

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02715-BNB

ENCARNACION T. RIVERA,

Plaintiff,

v.

BEVERLY DOWIS, Correctional Healthcare Management, Inc.,
WARDEN KEVIN MILYARD, Sterling Correctional Facility,
ARISTEDES W. ZAVARAS, Executive Director C.D.O.C.,
P.A. JOANN STOCK, Sterling, SCF,
N.P. KATHRY RITTENHOUSE, SCF,
DR. JOSEPH GARY FORTUNADO, SCF,
DR. PAULA FRANTZ, Chief Medical Officer, CDOC,
DR. STEPHEN KREBS, Physician Health Partners,
ALL JOHN DOES AND JANE DOES CURRENTLY NOT KNOWN BY NAME BUT WILL
BE NAMED AT A LATER DATE,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 27 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Encarnacion T. Rivera, is a prisoner in the custody of the Colorado Department of Corrections at the Sterling Correctional Facility at Sterling, Colorado. Mr. Rivera has filed *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights have been violated. The court must construe the complaint liberally because Mr. Rivera is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Rivera will be ordered to file an amended complaint.

The court has reviewed Mr. Rivera's complaint and finds that it is deficient. Mr. Rivera asserts four separate claims for relief that relate to the medical care he has received while incarcerated. However, he fails to assert those claims against the named Defendants. In other words, Mr. Rivera fails to specify which of the named Defendants is being sued with respect to each asserted claim.

In addition, Mr. Rivera fails to allege specific facts that demonstrate how each named Defendant is responsible for the asserted constitutional violations. Personal participation is an essential allegation in a civil rights action. **See *Bennett v. Passic***, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Mr. Rivera must show that each Defendant caused the deprivation of a federal right. **See *Kentucky v. Graham***, 473 U.S. 159, 166 (1985). There must be an affirmative link between the alleged constitutional violation and each Defendant's participation, control or direction, or failure to supervise. **See *Butler v. City of Norman***, 992 F.2d 1053, 1055 (10th Cir. 1993). A Defendant may not be held liable on a theory of respondeat superior merely because of his or her supervisory position. **See *Pembaur v. City of Cincinnati***, 475 U.S. 469, 479 (1986); ***McKee v. Heggy***, 703 F.2d 479, 483 (10th Cir. 1983).

Therefore, Mr. Rivera will be ordered to file an amended complaint in order to clarify against which Defendant or Defendants each claim is being asserted and to allege personal participation by each named Defendant. Mr. Rivera is advised that, in order to state a claim in federal court, his amended "complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant's action

harmed him or her; and, what specific legal right the plaintiff believes the defendant violated." *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). Furthermore, Mr. Rivera also is advised that § 1983 "provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights." *Conn v. Gabbert*, 526 U.S. 286, 290 (1999). Therefore, Mr. Rivera should name as Defendants in the amended complaint the persons he believes actually violated his constitutional rights. Accordingly, it is

ORDERED that Mr. Rivera file **within thirty (30) days from the date of this order** an original and sufficient copies of an amended complaint that complies with this order. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Rivera, together with a copy of this order, two copies of the following form: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Rivera fails to file an original and sufficient copies of an amended complaint that complies with this order to the court's satisfaction within the time allowed, the action will be dismissed without further notice.

DATED January 26, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02715-BNB

Encarnacion T. Rivera
Reg No. 111364
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner Complaint form** to the above-named individuals on 1/27/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk