

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00133-BNB

MICHAEL PEPPER FREITAS,

Plaintiff,

v.

BEVERLY DOWIS, Director of Medical Providers,
KATHY LOVELL, Assistant, Medical Person,
BARRY A. GOLDSMITH, SCF Physician, and
JOANIE SHOEMAKER, Dir. of DOC Clinical Services,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
FEB -3 2009
GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Michael Pepper Freitas, is a prisoner in the custody of the Colorado Department of Corrections at the Sterling Correctional Facility at Sterling, Colorado. Mr. Freitas has filed *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. The court must construe the complaint liberally because Mr. Freitas 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. Freitas will be ordered to file an amended complaint if he wishes to pursue his claims.

The court has reviewed the complaint filed by Mr. Freitas and finds that it is deficient because Mr. Freitas fails to allege facts that demonstrate how any of the named Defendants personally participated in the asserted constitutional violations. Mr.

Freitas asserts three claims that his constitutional rights have been violated because he has been denied adequate medical care. However, he asserts these three claims against the named Defendants generally without providing specific factual allegations that detail how each named Defendant allegedly violated his rights.

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. Freitas 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 who is a supervisory official may not be held liable on a theory of respondeat superior. **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. Freitas will be ordered to file an amended complaint to allege personal participation in the asserted constitutional violations by each of the named Defendants. Mr. Freitas 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). Accordingly, it is

ORDERED that Mr. Freitas 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 if he wishes to pursue his claims in this action. It is

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

FURTHER ORDERED that, if Mr. Freitas 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 complaint and the action will be dismissed without further notice.

DATED February 3, 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

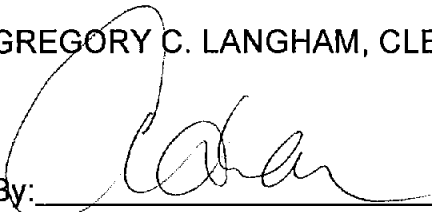
CERTIFICATE OF MAILING

Civil Action No. 09-cv-00133-BNB

Michael Pepper Freitas
Reg No. 47968
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 2/3/09

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk