

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00778-BNB

NICHOLAS SOUDERS,

Plaintiff,

v.

WARDEN BRILL, Kit Carson Correctional Facility,  
MS. MAINE, Former Contract Monitor,  
MS. SMALIZER, Former Contract Monitor,  
JUDY GRAY, Physician at Kit Carson Cor. Facility,  
JOHN DOE 1-25, and  
JANE DOE 1-25,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

APR 29 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT

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Plaintiff, Nicholas Souders, is in the custody of the Colorado Department of Corrections at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Souders initiated this action by filing *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 alleging that his rights under the United States Constitution have been violated. On April 8, 2009, the court ordered Mr. Souders to file an amended complaint that clarifies who he is suing and that provides specific factual allegations to demonstrate how each named Defendant allegedly violated his rights. On April 27, 2009, Mr. Souders filed an amended complaint.

The court must construe the amended complaint liberally because Mr. Souders 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 (10<sup>th</sup> 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. Souders will be ordered to file a second amended complaint.

The court has reviewed the amended complaint filed by Mr. Souders and finds that it is deficient. Although Mr. Souders has clarified who he is suing and it appears that he has made an attempt to allege personal participation by each named Defendant, the amended complaint is deficient because it does not include any specific claims for relief. Without any reference to his original complaint, Mr. Souders apparently expects the court to incorporate into the amended complaint the statement of his claims that is included in the original complaint. However, “an amended complaint supercedes the original complaint and renders the original complaint without legal effect.” **Mink v. Suthers**, 482 F.3d 1244, 1254 (10<sup>th</sup> Cir. 2007).

Because Mr. Souders appears to have made a good-faith effort to comply with the court’s prior order to amend, he will be given one more opportunity to file a proper pleading in this action. Mr. Souders is advised that the second amended complaint must include every claim for relief that he intends to raise as well as specific allegations in support of the asserted claims that detail how the named Defendants allegedly violated his constitutional rights. Mr. Souders is reminded that, in order to state a claim in federal court, his second 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 (10<sup>th</sup> Cir. 2007). Accordingly, it is

ORDERED that Mr. Souders file **within thirty (30) days from the date of this order** a second 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. Souders, together with a copy of this order, two copies of the following form: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Souders fails to file a second amended complaint that complies with this order within the time allowed the action will be dismissed without further notice.

DATED April 29, 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-00778-BNB

Nicholas Souders  
Prisoner No. 127292  
Kit Carson Corr. Center  
PO Box 2000  
Burlington, CO 80807

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 4/29/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk