IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01703-BNB

JOHNNY EDWARDS,

Plaintiff,

v.

LUCY HERNANDEZ, individual and official capacity,
JUDY BRIZENDINE, individual and official capacity,
LAURIE KNAPP, individual and official capacity,
POLLY WALTER, individual and official capacity,
DOCTOR CALBING, individual and official capacity, and
CORRECTIONAL CORPORATION OF AMERICA, individual and official capacity,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Johnny Edwards, is in the custody of the Colorado Department of Corrections and is currently incarcerated at the Crowley County Correctional Facility. He initiated this action by filing a ***pro se*** Prisoner Complaint pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 on July 17, 2009.

The Court must construe the Complaint liberally because Plaintiff 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). If the Complaint reasonably can be read "to state a valid claim on which the plaintiff could prevail, [the Court] should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading

requirements." ***Hall***, 935 F.2d at 1110. However, the Court should not act as an advocate for a ***pro se*** litigant. ***See id.*** Under Section 1983, a plaintiff must allege that the defendants have violated his or her rights under the United States Constitution while the defendants acted under color of state law. For the reasons stated below, Mr. Edwards will be directed to file an amended complaint.

Mr. Edwards asserts one claim. He alleges that un-identified Defendants acted with deliberate indifference to his serious medical needs when they failed to provide medical care for a bunion on his foot. Mr. Edwards alleges that this treatment violated his right to be free from cruel and unusual punishment pursuant to the Eighth Amendment. Nonetheless, he fails to assert how each named Defendant violated his constitutional rights.

Personal participation by the named defendants is an essential allegation in a civil rights action. ***See Bennett v. Passic***, 545 F.2d 1260, 1262-63 (10th Cir. 1976). ***Id.*** Mr. Edwards 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 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).

Mr. Edwards fails to assert how Defendants personally participated in the alleged constitutional violations. Therefore, he will be directed to file an Amended Complaint

that alleges how all named Defendants personally participated in the alleged constitutional violates. The Amended "[C]omplaint must explain what each defendant did to him . . . ; when the defendant did it; how the defendant's action harmed him . . . ; and, what specific legal right [he] believes the defendant violated." ***Nasious v. Two Unknown B.I.C.E. Agents***, 492 F.3d 1158, 1163 (10th Cir. 2007).

Mr. Edwards may use fictitious names, such as Jane or John Doe, if he does not know the real names of the individuals who allegedly violated his rights. However, if Mr. Edwards uses fictitious names he must provide sufficient information about each defendant so that each defendant can be identified for purposes of service. Accordingly, it is

ORDERED that Plaintiff, Johnny Edwards, file **within thirty (30) days from the date of this order** an amended complaint that complies with the directives in this order. It is

FURTHER ORDERED that it shall be titled "Amended Prisoner Complaint," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Edwards, together with a copy of this order, two copies of the following form to be used in submitting the amended complaint: Prisoner Complaint. It is

FURTHER ORDERED that, if Mr. Edwards fails to file 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 August 20, 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-01703-BNB

Johnny Edwards
Prisoner No. 60565
Crowley County Corr. Facility
6564 State Hwy. 96
Olney Springs, CO 81062-8700

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner Complaint** to the above-named individuals on 5/20/09

GREGORY C. LANGHAM, CLERK

By: _____
Deputy Clerk