

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02207-BNB

JOSE MEDINA ESCOBAR,

Plaintiff,

v.

WARDEN JONES,  
CAPTAIN K. FOSTER,  
LIEUTENANT MARTZ,  
LIEUTENANT CHAVEZ,  
SERGEANT A. LUNA,  
SERGEANT BINDER,  
SERGEANT J. WEST,  
SERGEANT HARDRICK,  
SERGEANT VAN DYKE,  
SERGEANT HUDSPETH,  
C/O D. GALLAGHER,  
C/O BRYANT,  
C/O A. DALTON,  
C/O R. MARTINEZ,  
DOCTOR WRIGHT,  
NURSE N. WALKER,  
C/O V. PASARO,  
DIRECTOR B. ZALMAN,  
SERGEANT KELEMAN, and  
CAPTAIN LOGAN,

Defendants.

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

OCT 22 2009

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT

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Plaintiff, Jose Medina Escobar, is a prisoner in the custody of the Colorado Department of Corrections at the Colorado State Penitentiary in Cañon City, Colorado. Mr. Escobar 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 September 22, 2009, the court ordered Mr. Escobar to file an amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. On October 16, 2009, Mr. Escobar filed an amended Prisoner Complaint.

The court must construe the amended Prisoner Complaint liberally because Mr. Escobar 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. Escobar will be ordered to file a second amended complaint.

The court has reviewed the amended Prisoner Complaint and has determined that the amended Prisoner Complaint is deficient. Although Mr. Escobar provides a clearer statement of his claims in the amended Prisoner Complaint, the amended Prisoner Complaint is not complete. Mr. Escobar has altered the court's Prisoner Complaint form to accommodate the number of Defendants he is suing and the length of the claims he is asserting. However, in the process of altering the form, Mr. Escobar omitted the second page of the Prisoner Complaint form. As a result, the amended Prisoner Complaint filed by Mr. Escobar does not include an address for each named Defendant as required in Section A of the court's Prisoner Complaint form.

In addition, the amended Prisoner Complaint filed by Mr. Escobar includes extraneous documents that make the pleading confusing. In particular, Mr. Escobar has submitted as part of his amended Prisoner Complaint a copy of the first two pages

of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 that was filed in this action on September 8, 2009. In addition, Mr. Escobar has included in the amended Prisoner Complaint a copy of a June 5, 2008, letter that has no apparent relevance to this action. The letter is addressed to Edward T. Farry, who is described as an attorney for the Defendants in another action filed by Mr. Escobar.

For these reasons, Mr. Escobar will be ordered to file a second amended complaint if he wishes to pursue his claims in this action. Mr. Escobar is reminded that he must present his claims clearly and concisely in a manageable format that allows the court and Defendants to know what claims are being asserted and to be able to respond to those claims. In order to state a claim in federal court, the 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). Mr. Escobar also is reminded that, for the purposes of Rule 8, "[i]t is sufficient, and indeed all that is permissible, if the complaint concisely states facts upon which relief can be granted upon any legally sustainable basis." *New Home Appliance Ctr., Inc., v. Thompson*, 250 F.2d 881, 883 (10<sup>th</sup> Cir. 1957). Accordingly, it is

ORDERED that Mr. Escobar file, **within thirty (30) days from the date of this order**, a second amended complaint that complies with the pleading requirements of Fed. R. Civ. P. 8 as discussed in this order. It is

FURTHER ORDERED that the clerk of the court mail to Mr. Escobar, together

with a copy of this order, two copies of the following form: Prisoner Complaint. It is

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

DATED October 22, 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-02207-BNB

Jose Medina Escobar  
Prisoner No. 48895  
Colorado State Penitentiary  
P.O. Box 777 - A4-11  
Cañon City, CO 81215-0777

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 10/22/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk