

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02593-BNB

JARED FLAHIFF,

Plaintiff,

v.

U/M COOPER,
H/O HASSENFRTZ, and
W/ HOYT BRILL,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 07 2010

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Jared Flahiff, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Kit Carson Correctional Facility in Burlington, Colorado. Mr. Flahiff, acting *pro se*, has filed a Prisoner Complaint pursuant to 42 U.S.C. § 1983. The Court must construe the Complaint liberally because Mr. Flahiff is a *pro se* litigant. *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 act as a *pro se* litigant's advocate. *See Hall*, 935 F.2d at 1110. For the reasons stated below, Mr. Flahiff will be ordered to file an Amended Complaint.

The Court has reviewed the Prisoner Complaint filed by Mr. Flahiff and finds that it is deficient. 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. Flahiff must show that each named 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. **See Pembaur v. City of Cincinnati**, 475 U.S. 469, 479 (1986); **McKee v. Heggy**, 703 F.2d 479, 483 (10th Cir. 1983).

Mr. Flahiff fails to assert how Defendant Hassenfritz 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 violations. 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). Accordingly, it is

ORDERED that **within thirty days from the date of this Order** Mr. Flahiff file an Amended Prisoner Complaint that complies with the Order. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Flahiff, together with a copy of this Order, two copies of the Prisoner Complaint form for use in filing the Amended Prisoner Complaint. It is

FURTHER ORDERED that if Mr. Flahiff fails to file an Amended Prisoner Complaint that complies with this Order, within the time allowed, the Court will proceed to review only the merits of the claims against Defendants Cooper and Brill.

DATED January 7, 2010, 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-02593-BNB

Jared Flahiff
Prisoner No. 110772
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** to the above-named individuals on 1/7/10

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk