

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01094-BNB

LARRY ELEVThERIOS JOHNSON,

Plaintiff,

v.

ABIGAIL PILMENSTEIN,  
UNIVERSITY OF COLORADO AT BOULDER,  
JUDICIAL AFFAIRS OFFICE, University of Colorado at Boulder,  
CAMPUS POLICE, University of Colorado at Boulder,  
SANCTIONED STUDENT "PEER" PROTECTION GROUP, University of Colorado at  
Boulder, and  
MESA (Movement to End Sexual Assault),

Defendants.

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

JUN 21 2010

GREGORY C. LANGHAM  
CLERK

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, Larry Elevtherios Johnson, initiated this action by filing a *pro se* Complaint and Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on May 3, 2010. He has been granted leave to proceed *in forma pauperis*.

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 set forth below, Plaintiff will be directed to file an amended complaint.

The Court finds that Mr. Johnson is suing improper parties. Mr. Johnson may not sue the University of Colorado at Boulder, the Judicial Affairs Office of the University of Colorado at Boulder or the Campus Police of the University of Colorado at Boulder. The State of Colorado and its entities are protected by Eleventh Amendment immunity. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989); *Meade v. Grubbs*, 841 F.2d 1512, 1525-26 (10th Cir. 1988). Further, the Tenth Circuit has recognized that the University of Colorado, and its divisions, are arms of the State of Colorado for Eleventh Amendment purposes. *See, e.g., Harrison v. University of Colorado Health Sciences Center*, 337 Fed. Appx. 750, 753 (10th Cir. July 10, 2009) (unpublished opinion). "It is well established that absent an unmistakable waiver by the state of its Eleventh Amendment immunity, or an unmistakable abrogation of such immunity by Congress, the amendment provides absolute immunity from suit in federal courts for states and their agencies." *Ramirez v. Oklahoma Dep't of Mental Health*, 41 F.3d 584, 588 (10th Cir. 1994). The State of Colorado has not waived its Eleventh Amendment immunity, *see Griess v. Colorado*, 841 F.2d 1042, 1044-45 (10th Cir. 1988), and congressional enactment of 42 U.S.C. § 1983 did not abrogate Eleventh Amendment immunity, *see Quern v. Jordan*, 440 U.S. 332, 340-345 (1979).

Further, Mr. Johnson's claims against Defendants Abigail Pilmenstein and MESA in this action are not asserted properly pursuant to § 1983, because Mr. Johnson does not assert that these Defendants were acting under color of state law. "Section 1983 provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights." **Conn v. Gabbert**, 526 U.S. 286, 290 (1999). "[T]he purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." **Wyatt v. Cole**, 504 U.S. 158, 161 (1992). "[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." **Am. Mfrs. Mut. Ins. Co. v. Sullivan**, 526 U.S. 40, 50 (1999) (internal quotation marks omitted). The only proper defendants in a § 1983 action are those who "represent [the state] in some capacity, whether they act in accordance with their authority or misuse it." **NCAA v. Tarkanian**, 488 U.S. 179, 191 (1988) (quoting **Monroe v. Pape**, 365 U.S. 167, 172 (1961)). Because Mr. Johnson does not assert that Defendants Pilmenstein or MESA were acting under color of state law, these Defendants are not proper parties to a § 1983 action.

Finally, Mr. Johnson also must assert personal participation by each named defendant. **See Bennett v. Passic**, 545 F.2d 1260, 1262-63 (10th Cir. 1976). To establish personal participation, Mr. Johnson must name and show how named defendants caused a deprivation of his federal rights. **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 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. Johnson may use fictitious names, such as "John or Jane Doe," if he does not know the real names of the individuals who allegedly violated his rights. However, if Mr. Johnson uses fictitious names he must provide sufficient information about each defendant so that they can be identified for purposes of service.

Mr. Johnson, therefore, will be directed to file an amended complaint that names only proper parties and alleges specific facts that demonstrate how each named defendant personally participated in the asserted constitutional violations. In order for Mr. Johnson to state a claim in federal court, his "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 Plaintiff, Larry Eleutherios Johnson, 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 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. Johnson, together  
with a copy of this order, two copies of the following form to be used in submitting the  
amended complaint: Complaint. It is

FURTHER ORDERED that, if Mr. Johnson 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 at Denver, Colorado, this 21<sup>st</sup> day of June, 2010.

BY THE COURT:

s/Craig B. Shaffer

Craig B. Shaffer

United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-01094-BNB

Larry E. Johnson  
909 14<sup>th</sup> St. #214  
Boulder, CO 80302

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Complaint** to the above-named individuals on 6/21/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk