

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01693-BNB

BILLY VON HALLCY,

Plaintiff,

v.

INTERIM EX. DIRECTOR ROGER WERHOLTZ, et al.,  
OFFICER DeHERRERA, Personal Capacity,  
LIEUTENANT SCAVARDA (4439), Personal Capacity,  
CAPTAIN VORWALD (1785), Personal Capacity,  
OFFICER MILLER Personal Capacity, and  
OFFICER DENNINGTON, Personal Capacity,

Defendants.

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, Billy Von Halcy, is a prisoner in the custody of the Colorado Department of Corrections at the Sterling Correctional Facility in Sterling, Colorado. Mr. Halcy has filed *pro se* a Prisoner Complaint (ECF No. 4) pursuant to 42 U.S.C. § 1983 claiming that his rights under the United States Constitution have been violated. He seeks damages as relief.

The court must construe the Prisoner Complaint liberally because Mr. Halcy 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. Halcy will be ordered to file an amended complaint if he wishes to pursue his claims in this action.

The court has reviewed the Prisoner Complaint and finds that the Prisoner Complaint is deficient. For one thing, it is not clear exactly who Mr. Halcy is suing because he improperly uses “et al.” in the caption of the Prisoner Complaint. Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure, “[t]he title of the complaint must name all the parties.” Pursuant to Rule 10.1J. of the Local Rules of Practice of the United States District Court for the District of Colorado-Civil, “[p]arties shall be listed in a caption with one party per line. The proper name of a party shall be in capital letters, and any identifying text shall be in upper and lower case immediately following the proper name.”

The court also finds that the Prisoner Complaint does not comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. The twin purposes of a complaint are to give the opposing parties fair notice of the basis for the claims against them so that they may respond and to allow the court to conclude that the allegations, if proven, show that the plaintiff is entitled to relief. See *Monument Builders of Greater Kansas City, Inc. v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473, 1480 (10<sup>th</sup> Cir. 1989). The requirements of Fed. R. Civ. P. 8 are designed to meet these purposes. See *TV Communications Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10<sup>th</sup> Cir. 1992). Specifically, Rule 8(a) provides that a complaint “must contain (1) a short and plain statement of the grounds for the court’s jurisdiction, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” The philosophy of Rule 8(a) is reinforced by Rule 8(d)(1), which provides that “[e]ach allegation must be simple, concise, and direct.” Taken together, Rules 8(a) and (d)(1) underscore the

emphasis placed on clarity and brevity by the federal pleading rules. Prolix, vague, or unintelligible pleadings violate Rule 8.

Mr. Hallcy fails to provide a short and plain statement of his claims showing he is entitled to relief. Mr. Hallcy alleges that a lamp was taken from his property following a shakedown of his cell in February 2013, that he filed a series of grievances regarding the lamp following the shakedown, and that Defendants have harassed and threatened him. However, it is not clear what specific claim or claims Mr. Hallcy is asserting against each named Defendant, what specific constitutional rights allegedly have been violated, and how each named Defendant personally participated in the asserted constitutional violations. Mr. Hallcy is asserting § 1983 claims against Defendants in their individual capacities, and “personal participation in the specific constitutional violation complained of is essential.” *Henry v. Storey*, 658 F.3d 1235, 1241 (10<sup>th</sup> Cir. 2011). Mr. Hallcy’s repetitive and conclusory allegations that Defendants are part of a conspiracy and that various constitutional amendments have been violated are not sufficient to identify the specific rights allegedly violated or to demonstrate personal participation by each named Defendant.

For these reasons, Mr. Hallcy will be ordered to file an amended complaint. For each claim he asserts in the amended complaint, Mr. Hallcy “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). “It 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).

Furthermore, the general rule that *pro se* pleadings must be construed liberally has limits and “the court cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10<sup>th</sup> Cir. 2005). Accordingly, it is

ORDERED that Mr. Hallcy file, **within thirty (30) days from the date of this order**, an amended complaint as directed in this order. It is

FURTHER ORDERED that Mr. Hallcy shall obtain the court-approved Prisoner Complaint form (with the assistance of his case manager or the facility’s legal assistant), along with the applicable instructions, at [www.cod.uscourts.gov](http://www.cod.uscourts.gov). It is

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

DATED July 25, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge