

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03459-GPG

ANGEL L. MENDEZ,

Plaintiff,

v.

MARCY LEGENDRE,

Defendant.

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ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

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Plaintiff, Angel L. Mendez, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Mendez has filed *pro se* a Prisoner Complaint (ECF No. 1). The court must construe the Prisoner Complaint liberally because Mr. Mendez 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. Mr. Mendez will be ordered to file an amended complaint if he wishes to pursue his claims in this action.

The Prisoner Complaint is deficient because it 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 the requirements of Rule 8.

Mr. Mendez fails to provide a short and plain statement of the grounds for the court’s jurisdiction because he does not list any statutory authority for his claims in the jurisdiction portion of the Prisoner Complaint.

Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.

*Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Even construing the Prisoner Complaint liberally, it is not apparent that Mr. Mendez is asserting any federal claims pursuant to 28 U.S.C. § 1331 (“[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”) or that the court has diversity jurisdiction over his claims pursuant to 28 U.S.C. § 1332(a) (“[t]he district courts shall have original

jurisdiction of all civil actions where the amount in controversy exceeds the sum or value of \$75,000 . . . and is between (1) citizens of different States”).

Mr. Mendez also fails to provide a short and plain statement of his claims showing he is entitled to relief. Mr. Mendez alleges that a payroll check mailed to him at a community corrections facility after he had been discharged from community corrections was deposited into a closed account and the funds were used to pay his rent and restitution. These factual allegations are clear. What is not clear are the specific legal claims Mr. Mendez is asserting against the named Defendant on the basis of these factual allegations.

For these reasons, Mr. Mendez must file an amended complaint. Mr. Mendez must identify, clearly and concisely, the specific claims he is asserting and the statutory authority that allows the court to consider those claims, the specific facts that support each asserted claim, against which Defendant or Defendants he is asserting each claim, and what each Defendant did that allegedly violated his rights. See *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10<sup>th</sup> Cir. 2007) (noting that, to state a claim in federal court, “a 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”). 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. Mendez file, **within thirty (30) days from the date of this**

**order**, an amended complaint that complies with this order. It is

FURTHER ORDERED that Mr. Mendez shall obtain the appropriate court-approved Complaint form, along with the applicable instructions, at [www.cod.uscourts.gov](http://www.cod.uscourts.gov). It is

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

DATED January 15, 2015, at Denver, Colorado.

BY THE COURT:

S/ Gordon P. Gallagher

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United States Magistrate Judge