

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

LUIS R. GONZALEZ-LOPEZ,

Plaintiff,

v.

CACHE COUNTY CORR. FACILITY et al.,

Defendants.

**MEMORANDUM DECISION AND ORDER
TO AMEND DEFICIENT COMPLAINT**

Case No. 1:10-CV-19 CW

District Judge Clark Waddoups

Plaintiff, Luis R. Gonzalez-Lopez, an inmate at Cache County Correctional Facility, filed this *pro se* civil rights suit. See 42 U.S.C.S. § 1983 (2010). Plaintiff was allowed to proceed *in forma pauperis*. See 28 *id.* 1915. Reviewing the Complaint under § 1915(e), the Court has determined that Plaintiff's Complaint is deficient as described below.

Deficiencies in Complaint

Complaint:

- (a) inappropriately alleges civil rights violations against Sheriff G. Lynn Nelson on a respondeat superior theory.
- (b) improperly names "Cache County Correctional Facility" and Cache County Correctional Facility Medical Department" as defendants, though they are not independent legal entities that can sue or be sued.
- (c) does not clearly identify each named defendant, as they must each be individually numbered and described in detail.
- (d) states names in text that do not match names in caption.
- (e) has claims appearing to be based on conditions of current

confinement; however, the complaint was apparently not submitted using the legal help Plaintiff is entitled to by his institution under the Constitution. See *Lewis v. Casey*, 518 U.S. 343, 356 (1996) (requiring prisoners be given "'adequate law libraries or adequate assistance from persons trained in the law' . . . to ensure that inmates . . . have a reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions or conditions of confinement") (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (emphasis added)).

- (f) Other: See below explanation of municipal liability doctrine.

Instructions to Plaintiff

Under Rule 8 of the Federal Rules of Civil Procedure a complaint is required to contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a). The requirements of Rule 8(a) are intended to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest." *TV Commc'ns Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff'd*, 964 F.2d 1022 (10th Cir. 1992).

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. "This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide

such facts if the court is to determine whether he makes out a claim on which relief can be granted." *Hall v. Bellmon*, 935 F.2d 1106, 1009 (10th Cir. 1991). Moreover, "it is not the proper function of the Court to assume the role of advocate for a pro se litigant." *Id.* at 1110. Thus, the Court cannot "supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded." *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

Plaintiff should consider the following points before refiling his complaint. First, the revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint. See *Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) (stating amended complaint supercedes original). Second, the complaint must clearly state what each individual defendant did to violate Plaintiff's civil rights. See *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (stating personal participation of each named defendant is essential allegation in civil rights action). Third, Plaintiff cannot name an individual as a defendant based solely on his or her supervisory position. See *Mitchell v. Maynard*, 80 F.3d 1433, 1441, (10th Cir. 1996) (stating supervisory status alone insufficient to support liability under § 1983). Fourth, if Plaintiff's claims regard conditions of

Plaintiff's current confinement, Plaintiff should seek help from institutional officials in preparing initial pleadings. And, Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as frivolous or meritless will be restricted from filing future lawsuits without prepaying fees.

Finally, subordinate agencies of counties are not separate legal entities with capacity to sue or be sued. See *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) (stating sheriff's and police departments are not usually considered legal entities subject to suit under § 1983). Thus, the Court construes Plaintiff's claims against Cache County Correctional Facility and its medical department as claims against Cache County itself.

To establish the liability of municipal entities, such as Cache County, under Section 1983, "a plaintiff must show (1) the existence of a municipal custom or policy and (2) a direct causal link between the custom or policy and the violation alleged." *Jenkins v. Wood*, 81 F.3d 988, 993-94 (10th Cir. 1996) (citing *City of Canton v. Harris*, 489 U.S. 378, 385 (1989)). Municipal entities cannot be held liable under § 1983 based on the doctrine of *respondeat superior*. See *Cannon v. City and County of Denver*, 998 F.2d 867, 877 (10th Cir. 1993); see also *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 694 (1978).

Plaintiff has not so far established a direct causal link between his alleged injuries and any custom or policy of Cache County. Thus, the Court concludes that Plaintiff's Complaint, as it stands, appears to fail to state claims against Cache County.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

- (1) Plaintiff shall have **THIRTY DAYS** from the date of this order to cure the deficiencies noted above;
- (2) the Clerk's Office shall mail Plaintiff a copy of the Pro Se Litigant Guide, containing a form civil-rights complaint; and,
- (3) if Plaintiff fails to timely cure the above deficiencies according to the instructions here this action will be dismissed without further notice.

DATED this 22nd day of March, 2010.

BY THE COURT:



CLARK WADDOUPS
United States District Judge