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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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JERRY ERNEST LOPEZ,  
Plaintiff,

v.

DAVIS COUNTY et al.,  
Defendants.

**MEMORANDUM DECISION  
& ORDER TO CURE  
DEFICIENT COMPLAINT**

Case No. 1:21-cv-114-DBB

District Judge David Barlow

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Plaintiff, former inmate Jerry Ernest Lopez, brings this *pro se* civil-rights action, *see* 42 U.S.C.S. § 1983 (2021),<sup>1</sup> *in forma pauperis*, *see* 28 *id.* § 1915. Having now screened the Complaint, (ECF No. 4), under its statutory review function,<sup>2</sup> the Court orders Plaintiff to file an amended complaint to cure deficiencies before further pursuing claims.

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<sup>1</sup>The federal statute creating a “civil action for deprivation of rights” reads, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C.S. § 1983 (2021).

<sup>2</sup> The screening statute reads:

(a) Screening.—The court shall review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C.S. § 1915A (2021).

### COMPLAINT'S DEFICIENCIES

Complaint:

- (a) improperly names "Layton District Court" as § 1983 defendant, when it is not independent legal entity that can sue or be sued.
- (b) asserts claims possibly invalidated by the rule in *Heck*. (See below.)
- (c) does not properly affirmatively link some defendants to civil-rights violations. (See below.)
- (d) possibly improperly names judge as defendant, apparently without considering judicial immunity. (See below.)
- (e) possibly improperly names prosecutor as defendant, apparently without considering prosecutorial immunity. (See below.)
- (f) tries to state § 1983 claims in violation of municipal-liability doctrine. (See below.)

### GUIDANCE FOR PLAINTIFF

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to 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." Rule 8's requirements mean 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).

Pro se litigants are not excused from meeting these minimal pleading demands. "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, 1110 (10th Cir. 1991). Moreover, it is improper for the Court "to assume the role of advocate for a pro se litigant." *Id.*

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 these general points before filing an amended complaint:

(1) 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 supersedes original). The amended complaint may also not be added to after it is filed without moving for amendment.<sup>3</sup>

(2) The complaint must clearly state what each defendant--typically, a named government employee--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). “To state a claim, a complaint must ‘make clear exactly *who* is alleged to have done *what* to *whom*.’” *Stone v. Albert*, 338 F. App'x 757, 759 (10th Cir. 2009) (unpublished) (emphasis in original) (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008)). Plaintiff should also include, as much as possible, specific dates or at least estimates of when alleged constitutional violations occurred.

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<sup>3</sup> The rule on amending a pleading reads:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

- (A) 21 days after serving it, or
- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleadings only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15.

(3) Each cause of action, together with the facts and citations that directly support it, should be stated separately. Plaintiff should be as brief as possible while still using enough words to fully explain the “who,” “what,” “where,” “when,” and “why” of each claim. *Robbins*, 519 F.3d at 1248 (“The [*Bell Atlantic Corp. v. Twombly*] Court was particularly critical of complaints that ‘mentioned no specific, time, place, or person involved in the alleged [claim].’ [550 U.S. 544, 565] n.10 (2007). Given such a complaint, ‘a defendant seeking to respond to plaintiff’s conclusory allegations . . . would have little idea where to begin.’ *Id.*”).

(4) Plaintiff may not name an individual as a defendant based solely on his or her supervisory position. *See Mitchell v. Maynard*, 80 F.2d 1433, 1441 (10th Cir. 1996) (stating supervisory status alone does not support § 1983 liability).

(5) Grievance denial alone with no connection to “violation of constitutional rights alleged by plaintiff, does not establish personal participation under § 1983.” *Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009).

(6) “No action shall be brought with respect to prison conditions under . . . Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C.S. § 1997e(a) (2021). However, Plaintiff need not include grievance details in his complaint. Exhaustion of administrative remedies is an affirmative defense that must be raised by Defendants. *Jones v. Bock*, 549 U.S. 199, 216 (2007).

### ***Heck***

Plaintiff’s claims appear to include some allegations that challenge the validity of his conviction or sentence. “In *Heck*, the Supreme Court explained that a § 1983 action that would impugn the validity of a plaintiff’s [incarceration] cannot be maintained unless the [basis for

incarceration] has been reversed on direct appeal or impaired by collateral proceedings.” *Nichols v. Baer*, 315 F. App’x 738, 739 (10th Cir. 2009) (unpublished) (citing *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994)). *Heck* keeps litigants “from using a § 1983 action, with its more lenient pleading rules, to challenge their conviction or sentence without complying with the more stringent exhaustion requirements for habeas actions.” *Butler v. Compton*, 482 F.3d 1277, 1279 (10th Cir. 2007) (citation omitted). *Heck* clarifies that “civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments.” 512 U.S. at 486.

Plaintiff argues that his constitutional rights were breached in a way that allegedly undermines his very imprisonment. *Heck* requires that, if a plaintiff requests § 1983 damages, this Court must decide whether judgment for the plaintiff would unavoidably imply that Plaintiff’s incarceration is invalid. *Id.* at 487. Here, it appears it may on some claims. If this Court were to conclude that Plaintiff’s constitutional rights were violated in a prejudicial manner, it would be stating that Plaintiff’s incarceration was not valid. Thus, the involved claims “must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* Plaintiff has not made this showing, which may result in dismissal of such claims.

#### **Affirmative Link**

[A] plaintiff who brings a constitutional claim under § 1983 can’t obtain relief without first satisfying the personal-participation requirement. That is, the plaintiff must demonstrate the defendant “personally participated in the alleged constitutional violation” at issue. *Vasquez v. Davis*, 882 F.3d 1270, 1275 (10<sup>th</sup> Cir. 2018). Indeed, because § 1983 is a “vehicle[] for imposing personal liability on government officials, we have stressed the need for careful attention to particulars, especially in lawsuits involving multiple defendants.” *Pahls v. Thomas*, 718 F.3d 1210, 1225 (10<sup>th</sup> Cir. 2013); *see also Robbins v. Oklahoma*, 519 F.3d 1242, 1250

(10th Cir. 2008) (explaining that when plaintiff brings § 1983 claims against multiple defendants, “it is particularly important . . . that the complaint make clear exactly *who* is alleged to have done *what* to *whom*”); *Tonkovich v. Kan. Bd. Of Regents*, 159 F.3d 504, 532-33 (10th Cir. 1998)) (holding that district court’s analysis of plaintiff’s § 1983 claims was “infirm” where district court “lump[ed]” together plaintiff’s claims against multiple defendants—“despite the fact that each of the defendants had different powers and duties and took different actions with respect to [plaintiff]”—and “wholly failed to identify specific actions taken by particular defendants that could form the basis of [a constitutional] claim”).

*Estate of Roemer v. Johnson*, 764 F. App’x 784, 790-91 (10th Cir. 2019).

“A plaintiff’s failure to satisfy this requirement will trigger swift and certain dismissal.” *Id.* at 790 n.5. Indeed, the Tenth Circuit has “gone so far as to suggest that failure to satisfy the personal-participation requirement will not only justify dismissal for failure to state a claim; it will render the plaintiff’s claim frivolous.” *Id.*

### **Judicial Immunity**

It is well settled that judges “are absolutely immune from suit unless they act in ‘clear absence of all jurisdiction,’ meaning that even erroneous or malicious acts are not proper bases for § 1983 claims.” *Segler v. Felfam Ltd. P’ship*, 324 F. App’x 742, 743 (10th Cir. 2009) (unpublished) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)). There are no facts alleged suggesting that the judge was not acting in a judicial capacity in presiding over Plaintiff’s case(s); if so, such actions are entitled to absolute immunity. *See Doran v. Sanchez*, 289 F. App’x 332, 332 (10th Cir. 2008) (unpublished).

### **Prosecutorial Immunity**

A prosecutor acting within the scope of his or her duties enjoys absolute immunity from suit under § 1983. *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976). The prosecutor’s acts, as

alleged by Plaintiff, appear to relate to advocacy before the court. This possible defendant therefore may be entitled to absolute prosecutorial immunity from this lawsuit.

### **Local Government Liability**

To establish liability of local-government entities, such as Davis County, under § 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)). Local governmental entities may not 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 Davis County. Thus, the Court concludes that Plaintiff's complaint, as it stands, fails to state claims against Davis County.

### **ORDER**

**IT IS HEREBY ORDERED** that:

- (1) Plaintiff must within thirty days cure the Complaint's deficiencies noted above by filing a document entitled, “Amended Complaint,” that does not refer to or include any other document.
- (2) The Clerk's Office shall mail Plaintiff the Pro Se Litigant Guide with a blank-form civil-rights complaint which Plaintiff must use if he wishes to pursue another amended complaint.
- (3) If Plaintiff fails to timely cure the above deficiencies according to this Order's instructions, this action will be dismissed without further notice.

(4) Plaintiff shall not try to serve the amended complaint on Defendants; instead, the Court will perform its screening function and determine itself whether the amended complaint warrants service. No motion for service of process is needed. *See* 28 U.S.C.S. § 1915(d) (2021) (“The officers of the court shall issue and serve all process, and perform all duties in [*in forma pauperis*] cases.”).

(5) Plaintiff must tell the Court of any address change and timely comply with Court orders. *See* D. Utah Civ. R. 83-1.3(e) (“In all cases, counsel and parties appearing *pro se* must notify the clerk’s office immediately of any change in address, email address, or telephone number.”). Failure to do so may result in this action’s dismissal for failure to prosecute. *See* Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.”).

(6) Time extensions are disfavored, though reasonable extensions may be granted. Any motion for time extension must be filed no later than **fourteen days** before the deadline to be extended.

(7) No direct communication is to take place with any judge. All relevant information, letters, documents, and papers, labeled with case number, are to be directed to the Clerk of Court.

DATED this 16th day of November, 2021.

BY THE COURT:



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JUDGE DAVID BARLOW  
United States District Court