APPENDIX

APPENDIX A

FILED
United States Court of Appeal
Tenth Circuit

February 5, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JASON BROOKS,

Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF CORRECTIONS; RICK RAEMISCH, CDOC Executive Director; TERESA REYNOLDS, CDOC Legal access program and litigation manager; LEEANN PUGA, FCF Law Librarian, and DOES 1-50; YVETTE BROWN, FCF Law Librarian; RICK RAEMISCH, Executive Director; JOEL STRICKLER, Hearings Officer and Lieutenant; MS. PRIETO, FCF Hearings Officer and Lieutenant; JAY HUDSON, Major at the FCF and ADA Inmate Coordinator; LEWIS T. BABCOCK, United States District Judge for the District of Colorado; GORDON P. GALLAGHER, United States Magistrate Judge for the District of Colorado; DOES 11-50,

Defendants - Appellees.

No. 18-1266
(D.C. No. 1:17-CV-02190-CMA)
(D. Colo.)

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **McHUGH, BALDOCK**, and **O'BRIEN**, Circuit Judges.

Jason Brooks, a state prisoner proceeding pro se, filed this action under 42 U.S.C. § 1983 alleging the Colorado Department of Corrections (CDOC) and various State and CDOC officials violated his constitutional rights by obstructing his access to the courts and taking other actions against him. The district court dismissed his claims under 28 U.S.C. § 1915(e) as legally frivolous and Brooks appealed. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we agree with the district court's conclusion and dismiss this appeal as frivolous. Because the appeal is frivolous, we also deny Brooks' motion to proceed in forma pauperis (IFP) on appeal and assess a "strike" under 28 U.S.C. § 1915(g).

BACKGROUND

Brooks was a prisoner at the CDOC's Fremont Correctional Facility (FCF) when he brought this action. He is an active pro se litigator who also assists fellow inmates with legal work. This is his ninth appeal to this court and his second appeal in this action.

Brooks filed this action in September 2017, alleging in a four-page complaint that the CDOC, its executive director and legal access coordinator, an FCF law librarian, and 50 unidentified "John Does" were violating his and a fellow inmate's First Amendment rights by obstructing their access to the courts and were retaliating

against Brooks for engaging in protected litigation activities.[1] In a simultaneously filed motion for preliminary injunction, Brooks described the alleged obstruction and retaliation, asserted the FCF did not provide inmates with adequate access to the law library, and sought to enjoin enforcement of CDOC legal access and assistance policies he claimed were obstructing inmates' constitutional right to access the courts.[2] Brooks also requested that the district court order the defendants to vacate the discipline he received for violating CDOC policy by performing legal work for a fellow inmate without that inmate being present with him in the law library and to restore files the FCF librarian had deleted from his digital folder on the law library computer based on the challenged policies. The district court denied Brooks' motion, initially and on reconsideration. Brooks appealed this denial, and we affirmed. *See Brooks v. Colo. Dep't of Corr.*, 730 F. App'x 628 (10th Cir. 2018).

While Brooks' motion for preliminary injunction was pending, the district court ordered Brooks to cure deficiencies in his complaint. It also granted Brooks' request to proceed IFP, that is, without prepayment of the district court's filing fees, under 28 U.S.C. § 1915.

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[1] The complaint also identified Jamie Valdiviezo-Perea, an inmate Brooks was helping on a legal matter, as a co-plaintiff, but the district court dismissed him from the suit shortly after it was filed for failing to respond to the court's orders. For ease of reference, we refer to Brooks as the plaintiff in this action from its inception.

[2] According to Brooks, the challenged policies require inmates to be present in the law library together if they wish to collaborate on legal work, require them to consent to have librarians read their legal documents if they wish to use the library's word-processing software, and place restrictions on the type and length of documents inmates can copy or print in the law library.

After receiving several extensions of time, Brooks filed a 30-page amended complaint that named a dozen additional defendants, including two state court judges, but was incomplete on its face because, among other things, it did not include any claims for relief. In a simultaneously filed second motion for preliminary injunction, Brooks explained his amended complaint was incomplete because FCF library staff, per CDOC policy, had only permitted him to print 30 pages of his 70-page complaint.[3] He requested that the district court order the CDOC to allow him to print and file his complete amended complaint, and detailed the twelve claims it included.

After reviewing the incomplete amended complaint and Brooks' intended claims as set forth in his preliminary injunction motion, the district court ordered Brooks to file a second amended complaint that complied with federal pleading requirements, was on the proper court-approved form and, per the court's instructions on that form, was no longer than 30 pages in length. It also denied Brooks' preliminary injunction motion and overruled his subsequent objection to the 30-page limit on his complaint.

Brooks filed a second amended complaint that complied with the 30-page requirement. In it, he asserted eight claims relating to legal access issues against the CDOC, eight individual State, CDOC, and FCF officials (collectively, "individual State defendants"), and John Does, as well as a claim against the federal magistrate and district court judges alleging they had unconstitutionally deprived him of court access and equal protection by limiting the length of his complaint. Brooks sought

[3] Brooks later reported his intended complaint was 72 pages.

compensatory and punitive damages and declaratory and injunctive relief on his claims.

Because it had granted Brooks IFP status, the district court reviewed Brooks' complaint to determine if it was frivolous or otherwise required dismissal under 28 U.S.C. § 1915(e)(2)(B). Based on this review, the district court dismissed Brooks' seven federal claims because they were legally frivolous and, in some cases, were also barred by Eleventh Amendment immunity. It further declined to exercise supplemental jurisdiction over Brooks' two state law conspiracy claims and therefore dismissed his complaint. The district court also denied Brooks leave to proceed IFP on appeal and certified under § 1915(a)(3) that an appeal would not be taken in good faith. Brooks timely appealed and also seeks leave to proceed IFP on appeal.[4]

DISCUSSION

On appeal, Brooks challenges the district court's orders limiting his second amended complaint to 30 pages and its dismissal of certain of his claims. We address each issue in turn.

A. Page Limitation

Brooks argues the district court improperly enforced CDOC's 30-page printing limitation against him and violated his constitutional right to access the courts when it directed him to file a second amended complaint of no more than 30 pages. He asserts

[4] Because the district court dismissed Brooks' second amended complaint before it was served, the defendants did not participate in the district court proceedings and are not participants in this appeal.

there is no rule or authority supporting a page limit on a complaint and that he was prejudiced because the court-ordered page limit forced him to drop several of his intended claims and omit allegations that would have prevented the court from dismissing his remaining claims.

We review a court-ordered page limitation for abuse of discretion, *see Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1112 (10th Cir. 2007), and conclude the district court acted well within its discretion in ordering Brooks to limit his second amended complaint to 30 pages. The basis for its order was the court's local rules governing the format and length of complaints filed by unrepresented prisoners asserting claims under § 1983. *See* D. Colo. Civ. R. 5.1(c) (ordering unrepresented prisoners to use "the procedures, forms, and instructions posted on the court's website" in formatting and filing pleadings). As the district court advised Brooks, *see* R. Vol. I at 43, the instructions to the form complaint on the district court's website provide that "[a]bsent prior order of the court, the total length of the Prisoner Complaint, including the form and all additional pages, may not exceed thirty pages." Information and Instructions for Filing a Prisoner Complaint, http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx#PrisonerDetainee (link to "Prisoner Complaint 1983 Instructions") (last visited February 1, 2019).

The district court further found Brooks had failed to demonstrate good cause for an exception to the 30-page limitation. The district court based this conclusion on its findings that: (1) Brooks' detailed statement of his intended claims in his preliminary injunction motion did not satisfy Rule 8's requirement that he provide a short and plain

statement of each claim showing he was entitled to relief, *see* Fed. R. Civ. P. 8(a); and (2) these claims, which addressed such disparate subjects as prison law library policies and procedures, prison disciplinary proceedings, state court postconviction proceedings, medical care, and a prison job assignment, were not properly joined in a single lawsuit against all of the named defendants, *see* Fed. R. Civ. P. 20(a)(2) (limiting circumstances in which multiple defendants can be joined in a single action). Based on our review of Brooks' intended claims, we find no abuse of discretion in this determination and the district court's consequent order requiring Brooks to comply with the 30-page limitation per the court's local rules.

We also reject Brooks' constitutional challenge to the 30-page limitation ordered by the district court. First, Brooks cites no authority for the proposition that this page limit violated his constitutional rights and we are aware of none. Second, we are not persuaded by Brooks' argument that the page limitation violated his right to access the courts because it prevented him from alleging specific facts sufficient to show that his claims stated a claim. Brooks' 30-page second amended complaint still contains many repetitive and/or unnecessary allegations that could have been omitted to make room for other, more relevant factual allegations. Further, Brooks fails to identify the specific allegations he would have included but for the 30-page limit and how they would have cured the deficiencies that led the district court to dismiss his complaint. And, as discussed in more detail below, Brooks must show he was prejudiced by the 30-page limitation to demonstrate a violation of his right to access the courts. He has not done so.

Accordingly, Brooks' constitutional challenge to the district court's page limitation is meritless.

B. Dismissal under § 1915(e)

Brooks argues the district court erred in dismissing his claims that the defendants violated his constitutional right to access the courts and retaliated against him for engaging in protected activities.[5] The district court dismissed these claims as legally frivolous for a variety of reasons, including that Brooks failed to allege essential elements of some claims, asserted non-existent rights in others, and in some instances asserted claims barred by Eleventh Amendment immunity.

A claim is frivolous "where it lacks an arguable basis either in law or in facts." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This standard is met where the plaintiff asserts facts that do not support an arguable claim, asserts the violation of a legal interest that clearly does not exist, or asserts claims against which the defendants are clearly immune from suit. *See id.* at 327-28. We review dismissals for frivolousness for abuse of discretion, but where, as here, the district court's frivolousness

[5] Brooks does not offer argument challenging the district court's dismissal of Claim Four, a Fourteenth Amendment failure to train and supervise claim against certain individual State defendants and unidentified John Does, and Claim Eight, in which he alleged the magistrate judge and district court judge violated his constitutional rights. He also did not challenge the district court's decision declining to exercise supplemental jurisdiction over the conspiracy claims asserted in Claims Six and Seven. Accordingly, Brooks has forfeited appellate review of the district court's dismissal of these claims. *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[T]he omission of an issue in an opening brief generally forfeits appellate consideration of that issue.").

determinations turn on legal issues, we review those decisions de novo. *See Conkle v. Potter*, 352 F.3d 1333, 1335 n.4 (10th Cir. 2003); *see also El Encanto, Inc. v. Hatch Chile Co.*, 825 F.3d 1161, 1162 (10th Cir. 2016) ("[A] district court always abuses its discretion when it errs on a legal question, and we decide the presence or absence of legal error de novo."). We construe Brooks' filings liberally in our review because he is acting pro se, but we will not act as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

1. Eleventh Amendment immunity

Brooks disputes the district court's holding that some of his claims are barred by the Eleventh Amendment, which grants the States and their agencies immunity from suit in federal courts unless the State has waived this immunity or Congress has abrogated it. *See Ellis v. Univ. of Kan. Med. Ctr.*, 163 F.3d 1186, 1195-96 (10th Cir. 1998). This immunity extends to damage claims asserted against state officials acting in their official capacity. *See id.* at 1196. Brooks' second amended complaint names eight individual State defendants, all of whom are sued in their official capacity, with six sued in their individual capacities as well. Brooks seeks damages in the eight claims he asserts against all or some of these defendants.

The district court dismissed Brooks' claims for damages against the CDOC and the individual State defendants in their official capacities on grounds of Eleventh Amendment immunity, as it has done in other § 1983 actions brought by Brooks. *See, e.g., Brooks v. Colo. Dep't of Corr.*, No. 13-CV-02894-CBS, 2014 WL 5315000, at *6 (D. Colo. Oct. 17, 2014). Although Brooks challenges this decision, he offers no

supporting argument other than to declare that Eleventh Amendment immunity may be waived by a state or abrogated by Congress. But Colorado has not waived its immunity from prisoner civil rights actions, *see Griess v. Colorado*, 841 F.2d 1042, 1044-45 (10th Cir. 1988) (per curiam), and Congress did not abrogate states' Eleventh Amendment immunity in enacting § 1983, *see Ellis*, 163 F.3d at 1196. Brooks also declares he did not sue the individual State defendants for damages in their official capacities, but his complaint is not so limited. The district court properly determined the damages claims against the CDOC and individual State defendants in their official capacities are barred by Eleventh Amendment immunity and legally frivolous.

2. Dismissal of court access and retaliation claims

The district court concluded the remainder of Brooks' court access and retaliation claims were legally frivolous and therefore subject to dismissal for a number of reasons. To affirm dismissal of these claims, we need only consider one of these reasons: the district court's finding that Brooks failed to assert facts that state an arguable claim either because he failed to include essential allegations or asserted constitutional rights that do not exist.

a. Standard of review

In reviewing whether Brooks stated an arguable claim for denial of court access or retaliation we consider whether he has alleged facts sufficient to "state a claim to relief that is plausible on its face," taking all of Brooks' well-pleaded facts, but not conclusory

allegations, as true and construing them in the light most favorable to him.[6] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Acosta v. Jani-King of Okla., Inc.*, 905 F.3d 1156, 1158 (10th Cir. 2018). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A failure to state a claim is legally frivolous if the claim lacks an arguable basis in law. *See Neitzke*, 490 U.S. at 328.

Brooks begins his challenge to the district court's dismissal of these claims by arguing that the court improperly held him to a heightened pleading standard, pointing to the court's direction that he needed to "make clear exactly *who* is alleged to have done *what* to *whom*, . . . as distinguished from collective allegations" for his § 1983 claims to pass muster. R. Vol. 1 at 45 (quoting *Pahls v. Thomas*, 718 F.3d 1210, 1225-26 (10th Cir. 2013) (internal quotation marks omitted)). Brooks contends this is a summary judgment standard but in fact it is the standard by which we review complaints asserting § 1983 claims against multiple defendants, based on the Supreme Court's guidance in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *See, e.g., Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011); *Robbins v. Okla. ex rel. Dep't of*

[6] Brooks asserts that our recitation of this standard of review in other appeals in which we reviewed Brooks' pleadings indicates that we believe his complaints are well-pleaded and that he has mastered the federal pleading rules. Opening Br. at 17. He is mistaken. This is the standard of review we apply to determine the sufficiency of all pleadings and our statement of it does not connote that the pleadings in question are sufficient and otherwise comply with the federal rules.

Human Servs., 519 F.3d 1242, 1249-50 (10th Cir. 2008). The district court did not err in advising Brooks of this standard or applying it to his claims.

b. Court access claims

Brooks asserted four claims in which he alleged all or some of the defendants violated his constitutional right to access the courts in various ways. In the first and broadest of these claims, Brooks alleges CDOC's legal access policies violate his First Amendment right to access the courts because they allow FCF to maintain an inadequate law library, limit inmate access to the library and to word processing, printing and copying equipment there, allow library staff to review inmate documents, and do not provide inmates with a reasonable means of helping each other with legal work. But as Brooks knows from our decision in his previous appeal in this case, *see Brooks*, 730 F. App'x at 631-32, to state a claim for denial of the constitutional right of access to the courts he was required to allege more than that the prison library or legal access policies are "subpar in some theoretical sense." *Lewis v. Casey,* 518 U.S. 343, 351 (1996). To state this claim Brooks was required to allege "actual injury" to his right to access the courts, that is, to allege facts showing how the allegedly deficient law library and challenged CDOC policies impaired his ability to pursue a nonfrivolous claim. *Id.* at 349, 351, 353 & n.3 (requiring that "the alleged shortcomings" actually hinder a prisoner's "efforts to pursue a legal claim" that is not frivolous); *Trujillo v. Williams*, 465 F.3d 1210, 1226 (10th Cir. 2006) (holding prisoner must "show that any denial or delay of access to the court prejudiced him in pursuing litigation" (internal quotation marks omitted)).

Brooks did not sufficiently allege actual injury. His general allegations that he failed to prevail in his collateral attacks on his conviction and restitution order as a result of the challenged policies and their implementation by FCF staff are too vague and conclusory to state an arguable claim. He further suggested in his complaint that CDOC's policies prevented him from timely challenging his criminal conviction, but not only did he fail to explain how the policies interfered with his ability to timely bring such claims, our review indicates that his federal habeas actions were actually denied on the merits or because Brooks failed to exhaust his remedies in state court. *See, e.g., Brooks v. Archuleta*, 621 F. App'x 921, 925-28 (10th Cir. 2015); *Brooks v. Archuleta*, 681 F. App'x 705, 706 (10th Cir.), *cert. denied*, 138 S. Ct. 132 (2017).[7] Brooks' allegation that he was unable to file "at least three different U.S. Supreme Court Certiorari briefs," R. Vol. I at 54, also fails to allege actual injury because he again did not explain how the challenged policies and actions prevented him from filing these briefs or that the claims he wished to bring before the Supreme Court were nonfrivolous. *See McBride v. Deer*, 240 F.3d 1287, 1290 (10th Cir. 2001) (holding plaintiff failed to allege actual injury on similar grounds). Brooks contends the required specific allegations were included in his 72-page amended complaint, but we

[7] To the extent Brooks is asserting that CDOC's legal access policies prevented him from exhausting his claims in state court, he fails to explain in his second amended complaint or his other filings in the district court how this is so. We also observe, as we did in affirming the district court's denial of Brooks' motion for preliminary injunction, *see Brooks*, 730 F. App'x at 632, that the challenged CDOC policies have not prevented Brooks from presenting this court and the district court with lengthy and detailed arguments on the issues presented.

see the same failings in the incomplete version of his first amended complaint and the detailed account of the omitted portion of this complaint he provided in his second preliminary injunction motion. For these reasons, the district court properly found Brooks' first court access claim was legally frivolous.

Brooks also included two claims in his second amended complaint in which he alleged various defendants violated his First Amendment rights because FCF law librarians allegedly read legal documents he created and stored on FCF's law library computers and deleted or required Brooks to delete some of these documents. The district court construed these claims as alleging interference with Brooks' right to access the courts, and held they were frivolous because he again failed to allege specific facts describing any nonfrivolous legal claim he was unable to pursue as a result of the named defendants' alleged actions. We agree.[8]

Brooks' final court access claim alleges certain defendants interfered with his constitutional right to work as a "jailhouse lawyer" for other inmates. The district court properly dismissed this claim as legally frivolous because our precedent establishes that Brooks has no such constitutional right. *See Smith v. Maschner*, 899 F.2d 940, 950 (10th Cir. 1990); *cf. Shaw v. Murphy*, 532 U.S. 223, 231 (2001) (declining "to cloak the provision of legal assistance [by prisoners] with any First Amendment protection above

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[8] Brooks also asserted in one of these claims that the librarians' actions violated his Fourth Amendment rights. The district court dismissed this claim for failure to state a claim, holding that prisoners do not have a reasonable expectation of privacy in files contained on a prison library computer and hence cannot invoke the Fourth Amendment's protection against unreasonable searches and seizures. Brooks does not challenge this decision on appeal and hence we do not address it. *See Bronson*, 500 F.3d at 1104.

and beyond the protection normally accorded prisoners' speech" because "it is indisputable that inmate law clerks are sometimes a menace to prison discipline" (internal quotations omitted)).[9]

Brooks also cites several Supreme Court decisions in support of his alleged constitutional right to provide legal assistance to other inmates but his reliance on these cases is misplaced. In *Johnson v. Avery*, 393 U.S. 483 (1969), the Supreme Court did not address whether an inmate has a constitutional right to provide legal assistance to other inmates but rather whether a prison could absolutely bar inmates from providing this assistance. *See id.* at 490 (holding a prison may place reasonable restrictions on jailhouse lawyering but may not prevent an inmate from receiving assistance from other inmates in preparing petitions for post-conviction relief unless it provides reasonable alternatives to assist them). Similarly, in *Bounds v. Smith*, 430 U.S. 817 (1977), the Court held only that a prison must assist inmates in the preparation and filing of meaningful legal papers in order not to infringe on each inmate's constitutional right of access to the courts, while also recognizing that this assistance may take many forms. *See id.* at 828, 830-32. The Court expanded on the limited nature of this holding in *Lewis*, 518 U.S. at 350-51, leading us to inform Brooks in his previous appeal in this action:

> The right to access the courts does not . . . guarantee inmates "the right to a law library or to legal assistance," but merely to "the means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." . . . The right "guarantees no particular methodology but rather the conferral of a capability—the

[9] To the extent *Scott v. Coughlin*, 344 F.3d 282, 288 (2d Cir. 2003), cited by Brooks, supports this proposition, it is contrary to the governing law in this circuit. *See Smith*, 899 F.2d at 950.

> capability of bringing contemplated challenges to sentences or conditions of confinement before the courts."

Brooks, 730 F. App'x at 631 (quoting *Lewis*, 518 U.S. at 350-51, 356 (internal quotation marks omitted)). Nothing in these decisions suggests a jailhouse lawyer such as Brooks has a constitutional right to provide the assistance these cases describe.

c. Retaliation claim

Brooks asserts the named defendants retaliated against him for acting as a jailhouse lawyer on behalf of another inmate, in violation of the First and Fourteenth Amendments.[10] To state such a claim, Brooks was required to allege, among other things, that the defendants retaliated against him for engaging in a constitutionally protected activity. *See Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007). Brooks failed to state an arguable retaliation claim because, as just described, acting as a jailhouse lawyer is not a constitutionally protected activity. *See Smith*, 899 F.2d at 950.

CONCLUSION

We conclude the district court properly dismissed Brooks' claims as frivolous and as a result this dismissal counts as a "strike" under 28 U.S.C. § 1915(g). *See Jennings v. Natrona Cty. Det. Ctr. Med. Facility,* 175 F.3d 775, 780 (10th Cir. 1999), *overruled on other grounds by Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015). We further conclude Brooks' appeal is frivolous under § 1915(e)(2)(B)(i) and therefore dismiss this appeal and assess another strike. We remind Brooks that if he accrues

[10] In his brief, Brooks also alleges the defendants retaliated against him for bringing this action, but this is not what he alleged in his complaint.

three strikes, he may not proceed IFP in civil actions before federal courts unless he is under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g). Because his appeal is frivolous, we also deny Brooks' motion to proceed IFP on appeal. *See DeBardeleben v. Quinlan,* 937 F.2d 502, 505 (10th Cir. 1991). Brooks is directed to make immediate payment of the unpaid balance of his filing fee.

Entered for the Court

Bobby R. Baldock
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02190-KLM

JASON BROOKS,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,
CYNTHIA COFFMAN, Colorado Attorney General,
TERESA REYNOLDS, Legal Access Program and Litigation Coordinator,
LEEANN PUGA, FCF Law Librarian,
YVETTE BROWN, FCF Law Librarian,
RICK RAEMISCH, Executive Director,
JOEL STRICKLER, Hearings Officer and Lieutenant,
MS. PRIETO, FCF Hearings Officer and Lieutenant,
JAY HUDSON, Major at the FCF and ADA Inmate Coordinator,
LEWIS T. BABCOCK, United States District Court Judge for the District of Colorado,
GORDON P. GALLAGHER, United States Magistrate Judge for the District of Colorado,
and
DOES 11-50,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Jason Brooks, is a prisoner in the custody of the Colorado Department of Corrections ("DOC"). Mr. Brooks, together with another inmate who since has been dismissed as a party, initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) that was not on the proper form and that did not include a short and plain statement of any claims showing Mr. Brooks is entitled to relief as required under the Federal Rules of Civil Procedure. On February 1, 2018, Mr. Brooks submitted to the Court a Verified Prisoner Complaint With Jury Demand (ECF No. 35) that was unsigned, incomplete, and also did

not provide a short and plain statement of any claims showing Mr. Brooks is entitled to relief. On March 1, 2018, Magistrate Judge Gordon P. Gallagher ordered Mr. Brooks to file an amended complaint no longer than thirty pages that complies with the pleading and joinder rules of the Federal Rules of Civil Procedure. On April 5, 2018, Mr. Brooks filed a Verified Amended Prisoner Complaint (ECF No. 45).

The Court must construe the Verified Amended Prisoner Complaint liberally because Mr. Brooks 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 Verified Amended Prisoner 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 be an advocate for a *pro se* litigant. *See id.*

Mr. Brooks has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Therefore, the Court must dismiss any claims in the Verified Amended Prisoner Complaint that are frivolous or seek damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B)(i) & (iii). A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). The Court will dismiss the Verified Amended Prisoner Complaint pursuant to § 1915(e)(2)(B)(i) & (iii).

Mr. Brooks asserts eight claims in the Verified Amended Prisoner Complaint pursuant to 42 U.S.C. § 1983 and Colorado state law that relate to the conditions of his

confinement at the Fremont Correctional Facility ("FCF"). He asserts a ninth claim against Senior District Judge Lewis T. Babcock and Magistrate Judge Gallagher. Mr. Brooks is suing Colorado Attorney General Cynthia Coffman, DOC Executive Director Rick Raemisch, Judge Babcock, and Magistrate Judge Gallagher in their official capacities. He is suing the remaining Defendants in both their individual and official capacities. He seeks damages as well as declaratory and injunctive relief. The Court will address each claim in turn.

Claim One

Claim One is a First Amendment access to the courts claim asserted against the DOC, Attorney General Coffman, Executive Director Raemisch, Legal Access Program and Litigation Coordinator Teresa Reynolds, and an unidentified John Doe. Mr. Brooks alleges in Claim One that DOC legal access policies have obstructed his access to the courts since February 2012 by preventing him from being able to timely attack his criminal conviction and sentence and forcing him to forego three United States Supreme Court briefs he wanted to file. He specifically alleges in support of Claim One that "[t]he law library at [FCF] is inadequate for all practicable purposes and the hours provided are constitutionally insufficient to enable inmates an ability to exercise due diligence, timely attack their criminal convictions, and/or challenge their conditions of confinement." (ECF No. 45 at 6.) Mr. Brooks seeks damages and injunctive relief with respect to Claim One.

Mr. Brooks may not sue either the DOC or any individual Defendants in their official capacity for damages. Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978). Therefore, Mr. Brooks' official capacity

claims against Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, and the unidentified John Doe must be construed as claims against the DOC and the State of Colorado. However, the State of Colorado is protected by Eleventh Amendment immunity. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989). The DOC, which is an agency of the State of Colorado, *see* Colo. Rev. Stat. § 24-1-128.5, also is protected by Eleventh Amendment immunity.

"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). Therefore, to the extent Mr. Brooks is asserting claims for damages against the DOC and against Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, and an unidentified John Doe in their official capacities in Claim One, the claims will be dismissed pursuant to § 1915(e)(2)(B)(iii).

The Eleventh Amendment does not bar a claim for prospective injunctive relief against individual state officials sued in their official capacities. *See Buchheit v. Green*, 705 F.3d 1157, 1159 (10th Cir. 2012). However, a "plaintiff cannot maintain a declaratory or injunctive action unless he or she can demonstrate a good chance of being likewise injured in the future." *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir. 1991). Mr. Brooks

fails to allege facts that demonstrate a good chance he will face the same or similar injuries as those alleged in Claim One because the allegations in Claim One relate to past injuries in his efforts to challenge his conviction and sentence. Furthermore, the allegations in Claim One also relate to conditions at the FCF and Mr. Brooks no longer is incarcerated at that prison. (*See* ECF No. 48.) Therefore, any claim for prospective injunctive relief in Claim One must be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i).

The individual capacity access to the courts claims against Ms. Reynolds and the unidentified John Doe also must be dismissed because Mr. Brooks fails to allege specific facts that demonstrate either of those Defendants personally participated in the asserted constitutional violation. Mr. Brooks was advised in the order directing him to file an amended complaint that allegations of "personal participation in the specific constitutional violation complained of [are] essential." *Henry v. Storey*, 658 F.3d 1235, 1241 (10th Cir. 2011); *see also Foote v. Spiegel*, 118 F.3d 1416, 1423 (10th Cir. 1997) ("[i]ndividual liability . . . must be based on personal involvement in the alleged constitutional violation."). The Tenth Circuit has explained the personal participation requirement as follows:

> [b]ecause § 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. It is particularly important that plaintiffs make clear exactly who is alleged to have done what to whom, . . . as distinguished from collective allegations. When various officials have taken different actions with respect to a plaintiff, the plaintiff's facile, passive-voice showing that his rights "were violated" will not suffice. Likewise insufficient is a plaintiff's more active-voice yet undifferentiated contention that "defendants" infringed his rights.

Pahls v. Thomas, 718 F.3d 1210, 1225-26 (10th Cir. 2013) (internal citations and quotation marks omitted). Despite the specific instructions in the order to amend, Mr. Brooks fails to provide a clear statement of what Ms. Reynolds or John Doe did or failed to do that allegedly violated his rights.

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 (10th Cir. 2005); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."). Thus, vague and conclusory allegations that his rights have been violated do not entitle a *pro se* pleader to a day in court regardless of how liberally the pleadings are construed. *See Ketchum v. Cruz*, 775 F. Supp. 1399, 1403 (D. Colo. 1991), *aff'd*, 961 F.2d 916 (10th Cir. 1992). "[I]n analyzing the sufficiency of the plaintiff's complaint, the court need accept as true only the plaintiff's well-pleaded factual contentions, not his conclusory allegations." *Hall*, 935 F.2d at 1110. Because Mr. Brooks fails to allege specific facts regarding Ms. Reynolds or John Doe, the individual capacity claims against them are legally frivolous and must be dismissed for lack of personal participation pursuant to § 1915(e)(2)(b)(i).

Finally, regardless of the relief he seeks or the capacity in which Defendants are being sued, Claim One lacks merit because Mr. Brooks fails to allege specific facts that demonstrate his constitutional right of access to the courts was violated. In order to state a cognizable claim for denial of access to the courts Mr. Brooks must allege specific facts that demonstrate an actual injury in his ability to pursue a nonfrivolous legal claim. *See Lewis v. Casey*, 518 U.S. 343, 351-52 (1996). Furthermore, the underlying cause of

action that allegedly was lost is an element of an arguable access to the courts claim that must "be described well enough to apply the 'nonfrivolous' test and to show that the 'arguable' nature of the underlying claim is more than hope." *Christopher v. Harbury*, 536 U.S. 403, 416 (2002). Claim One is legally frivolous because Mr. Brooks' vague and conclusory reference to his claims in a number of prior actions is not sufficient to demonstrate he suffered an actual injury.

For all of these reasons, Claim One will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii).

First Claim Two

Mr. Brooks asserts two claims identified as "Claim Two." (*See* ECF No. 45 at 8, 12.) The first "Claim Two" is asserted against the DOC, Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, FCF Law Librarian LeeAnn Puga, FCF Law Librarian Yvette Brown, and an unidentified John Doe. He contends in the first "Claim Two" that his First and Fourth Amendment rights were violated when his legal documents drafted and stored on DOC computers in the FCF law library were thoroughly read and reviewed by Ms. Puga, Ms. Brown and Ms. Reynolds because DOC policies permit law librarians to perform only a "cursory" review of an inmate's legal documents. According to Mr. Brooks, "[t]his thorough, unconstitutional reading of Brooks' legal documents by Defendant Puga directly resulted in Brooks being written up three separate times for helping another inmate seek legal redress." (*Id.* at 9.) Mr. Brooks also alleges that Ms. Puga, Ms. Brown, and Ms. Reynolds destroyed hundreds of pages of legal documents he needed to litigate a separate civil action in the District of Colorado, case number 13-cv-02894-KHR. As relief with respect to the first "Claim Two" Mr. Brooks seeks

damages, a declaration that inmates have a protected right to confidential communication with the courts and attorneys, and injunctive relief to prevent prison officials from reading legal papers drafted by inmates on DOC law library computers.

For the same reasons discussed above in connection with Claim One, Mr. Brooks may not sue the DOC or any individual Defendants in their official capacities for damages. Therefore, to the extent Mr. Brooks is asserting claims for damages in the first "Claim Two" against the DOC and against Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, Ms. Puga, Ms. Brown, and an unidentified John Doe in their official capacities, the claims will be dismissed pursuant to § 1915(e)(2)(B)(iii).

Also for the same reasons discussed above in connection with Claim One, the requests for declaratory and injunctive relief in the first "Claim Two" will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i) because Mr. Brooks no longer is incarcerated at the FCF and he fails to allege facts that demonstrate a good chance he will face the same or similar injuries as those alleged in the first "Claim Two." In any event, the official capacity claims lack merit because Mr. Brooks does not allege any injury caused by the DOC policy allowing cursory review of his legal documents. Instead, he contends his constitutional rights were violated when prison officials violated that policy and thoroughly read and reviewed his legal documents.

The individual capacity claims against Ms. Puga, Ms. Brown, Ms. Reynolds, and the unidentified John Doe also lack merit. To the extent Mr. Brooks is claiming his First Amendment rights were violated, the Court construes the claim as an access to the courts claim. However, Mr. Brooks again fails to allege specific facts describing any nonfrivolous legal claim he has been unable to pursue in order to demonstrate he

suffered an actual injury. *See Lewis*, 518 U.S. at 351-52; *Christopher*, 536 U.S. at 416. As noted above, vague and conclusory allegations that his rights have been violated do not entitle a *pro se* pleader to a day in court regardless of how liberally the pleadings are construed. *See Ketchum*, 775 F. Supp. at 1403. Therefore, the access to the courts component of the first "Claim Two" also will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i).

The Fourth Amendment claim lacks merit.. It is clear that "prisoners are not protected under the Fourth Amendment from unreasonable searches of their prison cells or from the wrongful seizure of property contained in their cells because 'the Fourth Amendment does not establish a right to privacy in prisoners' cells.'" *Rodriguez-Rodriguez v. United States*, 4 F. App'x 637, 639 (10th Cir. 2001) (quoting *Hayes v. Marriott*, 70 F.3d 1144, 1146 (10th Cir. 1995)). For the same reason, Mr. Brooks does not have a Fourth Amendment right to privacy regarding files created and stored on the prison law library computer. *Pierre v. LeBlanc*, No. 10-618-JJB-SCR, 2011 WL 4737408 at *5 (M.D. La. Sept. 15, 2011) ("Plaintiff does not have a Fourth Amendment right to privacy regarding the files contained on the prison library computer, nor a right to maintain her personal or work files on the prison library computer."). Therefore, the Fourth Amendment component of the first "Claim Two" also will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i).

For all of these reasons, the first "Claim Two" will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii).

Second Claim Two

Mr. Brooks contends in his second "Claim Two" that his First Amendment right to

be a jailhouse lawyer was violated by the DOC, Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, Ms. Puga, FCF Hearings Officer Lieutenant Joel Strickler, and FCF Major Jay Hudson. According to Mr. Brooks, his efforts to assist another inmate in preparing a postconviction motion were hindered by a DOC administrative regulation that requires inmates to be together in the law library while working on their cases. As relief for this claim Mr. Brooks seeks damages and a declaration that inmates cannot be punished for acting as a jailhouse lawyer. He also seeks injunctive relief preventing the DOC from obstructing and punishing all jailhouse lawyers; abolishment of the prison regulation that requires inmates to be together in the law library while working on their cases; an order directing Defendants to return to Mr. Brooks a pleading drafted on behalf of the inmate he was assisting; and creation of a policy that permits inmates a meaningful opportunity to talk with one another about their legal issues outside of the law library.

For the same reasons discussed above in connection with Claim One, Mr. Brooks may not sue the DOC or any individual Defendants in their official capacities for damages. Therefore, to the extent Mr. Brooks is asserting claims for damages in the second "Claim Two" against the DOC and against Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, Ms. Puga, Lieutenant Strickler, and Major Hudson in their official capacities, the claims will be dismissed pursuant to § 1915(e)(2)(B)(iii).

Also for the same reasons discussed above in connection with Claim One, the requests for declaratory and injunctive relief in the second "Claim Two" will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i) because Mr. Brooks no longer is incarcerated at the FCF and he fails to allege facts that demonstrate a good chance he

will face the same or similar injuries as those alleged in the second "Claim Two."

The individual capacity claims against Ms. Puga, Ms. Reynolds, Lieutenant Strickler, and Major Hudson also lack merit. First, Mr. Brooks does not have a constitutional right to be a jailhouse lawyer. *See Smith v. Maschner*, 899 F.2d 940, 950 (10th Cir. 1990). Second, even if such a right did exist, Mr. Brooks fails to allege specific facts that demonstrate each of these individuals personally participated in the asserted violation of that right. Therefore, the second "Claim Two" is legally frivolous and must be dismissed.

For all of these reasons, the second "Claim Two" will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii).

Claim Three

Claim Three is a First and Fourteenth Amendment retaliation claim asserted against Ms. Puga, Lieutenant Strickler, FCF Hearings Officer Lieutenant Prieto, Ms. Reynolds, Major Hudson, and an unidentified John Doe. Mr. Brooks alleges in support of Claim Three that these Defendants "directed a targeted campaign to punish and physically harm Brooks by bringing and upholding false disciplinary charges that were severely 'trumped up' in order to get Brooks thrown in the hole for exercising his First Amendment rights." (ECF No. 45 at 16.) According to Mr. Brooks, he was exercising his First Amendment right to be a jailhouse lawyer. He seeks damages as relief with respect to Claim Three.

For the same reasons discussed above in connection with Claim One, Mr. Brooks may not sue the individual Defendants in their official capacities for damages. Therefore, to the extent Mr. Brooks is asserting claims for damages in Claim Three

against Ms. Puga, Lieutenant Strickler, Lieutenant Prieto, Ms. Reynolds, Major Hudson, and an unidentified John Doe in their official capacities, the claims will be dismissed pursuant to § 1915(e)(2)(B)(iii).

The individual capacity retaliation claim also lacks merit and will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i). In order to state an arguable retaliation claim Mr. Brooks must allege specific facts that demonstrate: (1) he was engaged in constitutionally protected activity, (2) Defendant's actions caused him to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) Defendant's adverse action was substantially motivated as a response to Plaintiff's constitutionally protected activity. *See Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007); *Allen v. Avance*, 491 F. App'x 1, 6 (10th Cir. 2012). Mr. Brooks cannot state an arguable retaliation claim because he does not have a constitutional right to act as a jailhouse lawyer. *See Smith*, 899 F.2d at 950. Therefore, he was not engaged in constitutionally protected activity.

For these reasons, Claim Three will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii).

Claim Four

Claim Four is a Fourteenth Amendment failure to train and supervise claim asserted against Attorney General Coffman, Executive Director Raemisch, Ms. Reynolds, Major Hudson, and unidentified John Does. Mr. Brooks contends that Ms. Reynolds and Major Hudson "are responsible for the training and supervision of Defendants Puga and Brown while at the FCF" and that the unidentified John Does "are responsible for the training and supervision of Defendants Strickler and Prieto while

working at the FCF." (ECF No. 45 at 21.) Mr. Brooks contends the failures to train and supervise resulted in the constitutional violations described in his other claims. Mr. Brooks seeks damages as well as injunctive relief to remove Ms. Puga and Ms. Brown from the FCF law library, to provide proper training for all DOC law librarians and disciplinary hearing officers, to provide training to all Defendants on how to conduct themselves in a professional manner, and to provide training to the unidentified individuals responsible for correcting and overseeing unprofessional staff behavior at the FCF.

For the same reasons discussed above in connection with Claim One, Mr. Brooks may not sue any individual Defendants in their official capacities for damages. Therefore, to the extent Mr. Brooks is asserting claim for damages in Claim Four against Attorney General Coffman, Executive Director Raemisch, Major Hudson, Ms. Reynolds, and any unidentified John Does in their official capacities, the claims will be dismissed pursuant to § 1915(e)(2)(B)(iii).

Also for the same reasons discussed above in connection with Claim One, the requests for injunctive relief in Claim Four will be dismissed as legally frivolous pursuant to § 1915(e)(2)(B)(i) because Mr. Brooks no longer is incarcerated at the FCF and he fails to allege facts that demonstrate a good chance he will face the same or similar injuries as those alleged in Claim Four.

The individual capacity claims against Major Hudson, Ms. Reynolds, and the unidentified John Does lack merit because the claims are premised on asserted constitutional violations that the Court already has determined lack merit. Therefore, the individual capacity claims also are legally frivolous and must be dismissed.

For all of these reasons, Claim Four will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii).

Claim Five

Claim Five is a Fourteenth Amendment claim asserted against Ms. Puga, Ms. Brown, Major Hudson, Ms. Reynolds, and an unidentified John Doe. Mr. Brooks alleges in Claim Five that these Defendants violated his and other inmates' constitutional right of access to the courts by reading their legal papers and destroying legal work. He seeks damages and injunctive relief to remove Ms. Puga and Ms. Brown from the FCF law library and to ensure inmates' First Amendment rights are safeguarded at the FCF and throughout the DOC.

As noted above, Mr. Brooks does not have a protected right to be a jailhouse lawyer, *see Smith*, 899 F.2d at 950, and he may not assert claims on behalf of other inmates, *see* 28 U.S.C. § 1654. To the extent he is asserting an access to the courts claim in Claim Five on his own behalf, the claim is repetitive of the access to the courts claims discussed above in Claim One and the first "Claim Two." Claim Five will be dismissed pursuant to § 1915(e)(2)(B)(i) & (iii) for the same reasons discussed above in connection with Claim One and the first "Claim Two."

Claims Six and Seven

Claim Six is a state law civil conspiracy claim asserted against Ms. Reynolds, Major Hudson, Ms. Puga, and Ms. Brown. Claim Seven is a state law civil conspiracy and negligence claim asserted against the DOC, Executive Director Raemisch, Ms. Reynolds, and Attorney General Coffman. The Court declines to exercise supplemental jurisdiction over the state law claims because the federal claims over which the Court has

original jurisdiction will be dismissed. *See* 28 U.S.C. § 1367(c)(3).

Claim Eight

Claim Eight is asserted against Judge Babcock and Magistrate Judge Gallagher. Mr. Brooks contends in Claim Eight that his federal constitutional rights have been violated by enforcement of a rule limiting his amended complaint to thirty pages. Mr. Brooks alleges in Claim Eight that limiting his amended complaint to thirty pages has prevented him from asserting five additional claims in this action. He specifically claims he has been denied access to the courts and equal protection.

Judges are absolutely immune from suit for actions taken in their judicial capacity unless the judge was acting in the clear absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam). Judicial immunity "is not overcome by allegations of bad faith or malice." *Id.* at 11.

To determine whether an act is a judicial act taken in a judge's judicial capacity the Court must consider whether the act is a function normally performed by a judge and whether the affected party was dealing with the judge in his judicial capacity. *See id.* at 12. In the instant action it is plainly apparent that the acts of issuing orders in a pending case is a function normally performed by a judge and that Mr. Johnson was dealing with Judge Babcock and Magistrate Judge Gallagher in their judicial capacities.

The next question is whether Judge Babcock and Magistrate Judge Gallagher were acting in the clear absence of all jurisdiction. "[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). The Court notes that "the scope of the judge's

jurisdiction must be construed broadly where the issue is the immunity of the judge." *Id.* Mr. Johnson's allegations regarding Judge Babcock and Magistrate Judge Gallagher do not demonstrate they were acting in the clear absence of all jurisdiction.

Because Mr. Brooks seeks declaratory relief with respect to Claim Eight, it does not appear that Claim Eight is entirely barred by absolute judicial immunity. However, as noted above, a "plaintiff cannot maintain a declaratory or injunctive action unless he or she can demonstrate a good chance of being likewise injured in the future." *Facio*, 929 F.2d at 544. Mr. Brooks fails to allege facts that demonstrate a good chance he will face the same or similar injuries as those alleged in Claim Eight. Thus, Claim Eight is legally frivolous and must be dismissed.

In any event, even if Mr. Brooks could demonstrate a likelihood of a similar injury in the future, he fails to allege facts in support of Claim Eight that demonstrate his constitutional rights have been violated. With respect to the asserted denial of access to the courts, Mr. Brooks fails to demonstrate he suffered any actual injury because he fails to allege specific facts that demonstrate he was unable to include in his Verified Amended Prisoner Complaint a short and plain statement of all his claims that properly may be joined in a single action. *See Lewis*, 518 U.S. at 351-52; *Christopher*, 536 U.S. at 416.

Although Mr. Brooks also contends in Claim Eight that he has been denied equal protection, he fails to allege specific facts that demonstrate Judge Babcock and Magistrate Judge Gallagher intentionally treated him differently than any similarly situated inmate. *See SECSYS, LLC v. Vigil*, 666 F.3d 678, 684 (10th Cir. 2012) (the Equal Protection Clause "seeks to ensure that any classifications the law makes are made without respect to persons, that like cases are treated alike, that those who appear

similarly situated are not treated differently without, at the very least, a rational reason for the difference."); *see also Price-Cornelison v. Brooks*, 524 F.3d 1103, 1109-10 (10th Cir. 2008) (discussing elements of an equal protection claim).

For all of these reasons, the Court finds that Claim Eight must be dismissed pursuant to pursuant to § 1915(e)(2)(B)(i) & (iii).

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. *See Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full $505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Verified Amended Prisoner Complaint (ECF No. 45) and the action are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) & (iii). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

FURTHER ORDERED that "Plaintiff's Request to Direct United States Marshalls to Effect Service on Proper Address" (ECF No. 46) and Plaintiff's request for a status update (ECF No. 51) are denied as moot.

DATED: May 30, 2018

BY THE COURT:

Christine M. Arguello

CHRISTINE M. ARGUELLO
United States District Court

APPENDIX C

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS **April 11, 2018**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JASON BROOKS,

Plaintiff - Appellant,

and

JAMIE VALDIVIEZO-PEREA,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS; RICK RAEMISCH, CDOC Executive Director; TERESA REYNOLDS, CDOC Legal access program and litigation manager; LEEANN PUGA, FCF Law Librarian; and DOES 1-50,

Defendants - Appellees.

No. 17-1363
(D. Colo.)
(D.C. No. 1:17-CV-02190-GPG)

ORDER AND JUDGMENT*

Before **BRISCOE, HOLMES**, and **MATHESON**, Circuit Judges.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* FED. R. APP. P. 34(a)(2); 10TH CIR. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Pro se plaintiff Jason Brooks raises this interlocutory appeal from the district court's denial of his motion for a preliminary injunction and motion for a protective order. Mr. Brooks is a prisoner at the Fremont Correctional Facility ("FCF") of the Colorado Department of Corrections ("CDOC"). He filed this lawsuit under 42 U.S.C. § 1983 against CDOC and a number of individual defendants alleging a violation of his right to access the courts, as well as retaliation for exercising that right and for assisting other inmates in exercising their rights.

Exercising jurisdiction pursuant to 28 U.S.C. § 1292(a), and construing Mr. Brooks's filings liberally, *see Garza v. Davis*, 596 F.3d 1198, 1201 n.2 (10th Cir. 2010), we **affirm** the district court's order.

Mr. Brooks previously sued CDOC and a number of its medical staff in a separate lawsuit alleging violations of Title II of the Americans with Disabilities Act and the Eighth Amendment of the United States Constitution, arising from inadequate provision of treatment for his ulcerative colitis. *See Brooks v. Colo. Dep't of Corr.*, No. 16-1469, 2017 WL 4785934, at *1 (10th Cir. Oct. 24, 2017) (unpublished). Mr. Brooks has spent a significant amount of time litigating this and other lawsuits. When not pursuing his own claims, Mr. Brooks also serves as a "jailhouse lawyer," assisting fellow inmates with legal work.

An FCF library policy permits inmates to assist each other with legal work,

but the policy requires both inmates to be present in the library while the assistance is rendered. On August 21, 2017, Mr. Brooks attempted to print a motion for post-conviction relief for fellow inmate Jamie Valdiviezo-Perea while Mr. Valdiviezo-Perea was not present. A legal librarian denied his print request, and Mr. Brooks responded by claiming that he and Mr. Valdiviezo-Perea were co-defendants—by which, he now explains, he meant that they became "co-defendants in equity" from the moment the print request was denied. R. at 31 (Pl.'s Mot. for Prelim. Inj., dated Sept. 11, 2017). The librarian concluded that Mr. Brooks and Mr. Valdiviezo-Perea were not co-defendants. The librarian proceeded to read other legal documents saved in Mr. Brooks's digital folder, and demanded that Mr. Brooks delete files pertaining to other inmates in accordance with FCF's data storage policies. Mr. Brooks did not comply, and the librarian deleted the files herself.

Mr. Brooks was "writ[ten]up" for fraud following this incident, and for issuing a threat (which Mr. Brooks denies) during a subsequent confrontation with the same legal librarian. *Id.* Following a disciplinary hearing, Mr. Brooks lost thirty days of "good time," was moved out of the "incentive living unit," and was placed in segregated confinement for ten days; during eight of these days, Mr. Brooks claims that he did not eat because the food that he was provided exacerbated his ulcerative colitis. *See id.* at 60 (Pl.'s Mot. for Protective Order, dated Sept. 12, 2017); Aplt.'s Opening Br. at 3. Mr. Brooks claims that, "after

[he] was fraudulently written-up, [the legal librarians] revised the CDOC Word Processing Agreement to all [of a] sudden state, 'All documents created are subject to review by [a] Legal Assistant,'" and that this revised policy is "unconstitutional on its face." Aplt.'s Opening Br. at 4.

Mr. Brooks filed a complaint in the district court challenging various FCF policies that, he claims, infringe his right to access the courts without legitimate penological justification, and claiming that the disciplinary sanctions were imposed in retaliation for his exercise of that court-access right. Mr. Brooks simultaneously moved for a preliminary injunction to order the CDOC to "vacate" the disciplinary findings against him and restore his digital files, to prohibit prison officers from reading his legal documents, and to enjoin enforcement of policies: (1) requiring prisoners to consent to have librarians read their legal documents if they wish to use word-processing software; (2) requiring prisoners to be present in the library together if they wish to collaborate on legal work; and (3) placing restrictions on the type and length of documents that may be copied or printed in the legal library. R. at 40–41. Mr. Brooks argues that the requested injunctive measures are necessary to allow him to pursue this suit. Mr. Brooks also moved for a protective order prohibiting the law librarian from interacting with him or reading his digital files.

On September 18, 2017, the district court denied Mr. Brooks's motions.[1] The court held that Mr. Brooks had not shown that he would suffer irreparable injury absent injunctive relief, nor had he demonstrated a likelihood of success on the merits. The court further denied Mr. Brooks's motion for reconsideration, and dismissed Mr. Valdiviezo-Perea from the suit for failing to respond to the court's orders. On October 12, 2017, Mr. Brooks filed his notice of interlocutory appeal. The court denied Mr. Brooks's request for *in forma pauperis* ("IFP") status for this interlocutory appeal, finding that the appeal was "not taken in good faith." *Id.* at 148 (Min. Order, dated Nov. 14, 2017).

Mr. Brooks alleged, by way of a declaration dated September 21, 2017, that he was written up for two further "baseless" disciplinary charges, and that he was sent to disciplinary segregation after he filed the instant complaint. *Id.* at 79 (Decl. of Jason Brooks, dated Sept. 21, 2017). Mr. Brooks was apparently charged with using a derogatory word to refer to a prison officer.

On March 19, 2018, after this appeal had been pending for over four months, Mr. Brooks filed a request for this court to take judicial notice of the district court's March 1, 2018 order directing him to limit his amended complaint to thirty pages. Mr. Brooks challenges the legality of this order, arguing that he

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[1] The district court issued this order before service was made upon the defendants. None of the defendants have appeared or filed briefs before the district court or on appeal.

requires a significantly greater number of pages to satisfy the pleading standards of Federal Rule of Civil Procedure 8. Mr. Brooks also repeats many of the factual and legal claims regarding the CDOC printing policies previously raised in his preliminary-injunction motion and his brief on appeal.

This court reviews the denial of a motion for a preliminary injunction for an abuse of discretion. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1128 (10th Cir. 2013) (en banc), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, --- U.S. ----, 134 S. Ct. 2751 (2014). "An abuse of discretion occurs only when the trial court bases its decision on an erroneous conclusion of law or where there is no rational basis in the evidence for the ruling." *Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012) (quoting *Wilderness Workshop v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1220, 1223–24 (10th Cir. 2008)).

A movant must show that the following four factors weigh in his favor to establish a right to a preliminary injunction: "(1) [he] is substantially likely to succeed on the merits; (2) [he] will suffer irreparable injury if the injunction is denied; (3) [his] threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction would not be adverse to the public interest." *Id.* (alterations in original) (quoting *Beltronics USA, Inc. v. Midwest Inventory Distribution, L.L.C.*, 562 F.3d 1067, 1070 (10th Cir. 2009)). To obtain a preliminary injunction altering the status quo, as requested here, the movant "must make a *strong* showing both with regard to the likelihood of

success on the merits and with regard to the balance of harms." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975–76 (10th Cir. 2004) (en banc) (per curiam) (emphasis added), *aff'd sub nom. Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006).

A preliminary injunction is an "'extraordinary remedy' that is granted only when 'the movant's right to relief [is] clear and unequivocal." *First W. Capital Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1145 (10th Cir. 2017) (alteration in original) (quoting *Wilderness Workshop*, 531 F.3d at 1224). Further, where a party seeks a preliminary injunction to "alter the status quo," "the movant must satisfy a heightened burden" of showing "that the exigencies of the case support" his motion. *O Centro Espirita Beneficiente Uniao Do Vegetal*, 389 F.3d at 975.

Mr. Brooks claims that prison policies and retaliation will cause irreparable injury to his right to access the courts absent a preliminary injunction because he will be unable to prosecute this and other lawsuits. The district court held that Mr. Brooks had not shown that he would suffer prospective, irreparable injury absent a preliminary injunction.[2] Based on our review of the record, we affirm.[3]

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[2] Mr. Brooks's notice of appeal designates both the denial of the preliminary injunction and the denial of the protective order as orders appealed from. However, Mr. Brooks raises no arguments unique to his motion for a protective order on appeal. The district court treated both motions together as motions for preliminary injunctions, and we do the same here.

[3] Because we affirm on the basis that Mr. Brooks has not shown that he will suffer irreparable injury, we need not reach the district court's alternate (continued...)

The right to access the courts is "one aspect of the First Amendment right to petition the government for redress," as well as a "guarantee[of] the right to present to a court of law allegations concerning the violation of constitutional rights" protected by the Due Process Clause. *See Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir. 1990).

As pertains to the rights of prisoners, the Supreme Court has held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers." *Bounds v. Smith*, 430 U.S. 817, 828 (1977). The right to access the courts does not, however, guarantee inmates "the right to a law library or to legal assistance," but merely to "the means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.'" *Lewis v. Casey*, 518 U.S. 343, 350–51 (1996) (quoting *Bounds*, 430 U.S. at 825). The right to access the courts is "only [the right] to present . . . grievances to the courts," and does not require prison administrators to supply resources guaranteeing inmates' ability "to *litigate effectively* once in court" or to "conduct generalized research." *Id.* at 354, 360. The right "guarantees no particular methodology but rather the conferral of a capability—the capability of bringing

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[3](...continued)
holding that Mr. Brooks failed to show a likelihood of success on the merits. We offer no opinion regarding the likelihood of Mr. Brooks's ultimate success on the merits of his claims.

contemplated challenges to sentences or conditions of confinement before the courts." *Id.* at 356.

A plaintiff must show "actual injury" to demonstrate a violation of the right to access the courts, as that right is not a "freestanding right to a law library or legal assistance." *Id.* at 351. The plaintiff "must show that any denial or delay of access to the court prejudiced him in pursuing litigation." *Treff v. Galetka*, 74 F.3d 191, 194 (10th Cir. 1996).

Here, Mr. Brooks has not shown that the CDOC policies will prevent him from "present[ing his] grievances to the courts." *Lewis*, 518 U.S. at 360. He has identified no concrete claim on his own behalf that he has been unable to present to a court on account of the various prison policies governing inmates' legal work.

Mr. Brooks claims that printing and copying restrictions will limit his ability to effectively litigate. He relies upon *Johnson v. Parke*, 642 F.2d 377, 379–80 (10th Cir. 1981) (per curiam), in which this court held that a prison policy strictly limiting the photocopying of legal documents to a *single* copy would unconstitutionally restrict inmates' rights to access the courts. The court in *Johnson* limited its holding, however, noting that "an inmate's right of access to the courts does not require that prison officials provide inmates free or unlimited access to photocopying machinery." *Id.* at 380.

The district court did not abuse its discretion here in finding that the CDOC

policies do not threaten irreparable injury. The policies did not prevent Mr. Brooks from presenting the district court with a fact-intensive, twenty-five page motion for a preliminary injunction in this case, complete with relevant legal support, and a twenty-three page brief on appeal substantially repeating the same factual allegations and legal arguments.

Mr. Brooks argues that First Amendment violations are, per se, irreparable injuries, citing *Elrod v. Burns*, 427 U.S. 347 (1976), for this proposition. That case involved claims by public employees who faced threats of discharge due to their political affiliations. *Id.* at 349. Irrespective of whether the political rights of public employees are even remotely analogous to prisoners' rights to access the courts, as discussed above, Mr. Brooks has not shown that he will suffer a First Amendment violation: He has not shown that the policies of the CDOC infringe upon his right—arising under the First Amendment—to "present . . . grievances to the courts." *Lewis*, 518 U.S. at 360.

Finally, Mr. Brooks alleges that immediate injunctive relief is required to protect the right of his co-plaintiff, Mr. Valdiviezo-Perea, to seek collateral relief from his conviction. Mr. Valdiviezo-Perea has been dismissed from this suit and has raised no appeal from that order. This court therefore lacks jurisdiction to review Mr. Brooks's claim to vindicate Mr. Valdiviezo-Perea's right. *See* FED. R. APP. P. 3(c)(1)(A); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("Rule 3's dictates are jurisdictional in nature, and their satisfaction is a prerequisite to appellate

review."); *Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1300 & n.2 (10th Cir. 1999).

For the reasons discussed above, we conclude that the district court did not abuse its discretion in holding that Mr. Brooks failed to show he would suffer irreparable injury absent a preliminary injunction, especially given the heightened showing required for injunctive relief altering the status quo. *See O Centro Espirita Beneficiente Uniao Do Vegetal*, 389 F.3d at 976. We therefore **affirm** the district court's order denying a preliminary injunction.

As we mentioned, Mr. Brooks has asked us to take judicial notice of the district court's order limiting his amended complaint to no more than thirty pages. Mr. Brooks also has requested that we order supplemental briefing, apparently with the objective of obtaining relief from that order. The district court's order governing Mr. Brooks's yet-to-be-filed amended complaint is not at issue in this appeal from the denial of a preliminary injunction, and this court lacks jurisdiction to review orders of the district court not designated in Mr. Brooks's notice of appeal. *See Soma Med. Int'l*, 196 F.3d at 1300 & n.2. Any limitations upon Mr. Brooks's amended complaint are not relevant to the denial of preliminary injunctive relief under review.[4] We therefore **deny** Mr. Brooks's

[4] To the extent that Mr. Brooks's judicial-notice request includes factual and legal claims relevant to the order appealed from, such claims are repetitive of claims made in his opening brief on appeal.

request to take judicial notice, and decline to order supplemental briefing.

Finally, Mr. Brooks renews his request to proceed IFP on appeal. Under the IFP statute, this court may authorize the commencement of an appeal "without prepayment of fees." 28 U.S.C. § 1915(a)(1). Because we find that Mr. Brooks has advanced a "reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal," *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812–13 (10th Cir. 1997) (quoting *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991)), we grant his request for IFP status.[5]

For the foregoing reasons, we **AFFIRM** the district court's judgment denying Mr. Brooks's motion for a preliminary injunction and motion for a protective order, and **GRANT** Mr. Brooks's request to proceed IFP on appeal.

ENTERED FOR THE COURT

Jerome A. Holmes
Circuit Judge

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[5] Lest this grant engender any confusion, we underscore that Mr. Brooks is not relieved of the obligation to pay the full filing fee in partial payments. On December 19, 2017, Mr. Brooks filed a document styled, "Request for Ruling on Substantive Aspects of In Forma Pauperis," seeking in effect a waiver of these partial payments. Such waivers are statutorily prohibited. *See* 28 U.S.C. § 1951(b)(1). We properly hold Mr. Brooks responsible for having knowledge of this statutory prohibition when he elected to file and prosecute this appeal. His December 19 request is **denied.**

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02190-GPG

JASON BROOKS,

Plaintiff,

v.

STATE OF COLORADO,
COLORADO DEPARTMENT OF CORRECTIONS,
WILLIAM CAMPBELL, Executive Director Colorado Commission on Judicial Discipline,
CYNTHIA COFFMAN, Colorado Attorney General,
MICHAEL BELLIPANNI, Assistant Attorney General,
TERESA REYNOLDS, Legal Access Program and Litigation Coordinator,
LEEANN PUGA, FCF Law Librarian,
YVETTE BROWN, FCF Law Librarian,
RICK RAEMISCH, Executive Director,
JULIE HOSKINS, Weld County District Judge,
TIMOTHY KERNS, Weld County District Judge,
JOEL STRICKLER, Hearings Officer and Lieutenant,
MS. PRIETO, FCF Hearings Officer and Lieutenant,
SUSAN TIONA, CDOC Chief Medical Officer,
JANET SMITH, ADA Inmate Coordinator,
JAY HUDSON, Major at the FCF and ADA Inmate Coordinator,
PHYSICIAN HEALTH PARTNERS, and
DOES 1-50,

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff, Jason Brooks, is a prisoner in the custody of the Colorado Department of Corrections ("DOC") at the Fremont Correctional Facility in Cañon City, Colorado. Mr. Brooks, together with another inmate who since has been dismissed as a party, initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) that was not on the proper form and that did not include a short and plain statement of any claims showing Mr.

Brooks is entitled to relief as required under the Federal Rules of Civil Procedure. After being granted a number of extensions of time, Mr. Brooks submitted to the court on February 1, 2018, a Verified Prisoner Complaint With Jury Demand (ECF No. 35) and a Motion for Preliminary Injunction (ECF No. 36).

The Verified Prisoner Complaint With Jury Demand, which is twenty-nine pages long, is incomplete, unsigned, and fails to provide a short and plain statement of any claims showing Mr. Brooks is entitled to relief. Mr. Brooks asserts in the Motion for Preliminary Injunction that prison officials will not allow him to print his entire amended complaint, which he alleges is seventy pages long, because of a DOC policy that limits the length of § 1983 suits to thirty pages. Mr. Brooks further asserts that he is willing to pay the cost of printing the entire amended complaint. He seeks injunctive relief directing the DOC to permit him to print a complete copy of his amended complaint to be submitted to the court. Mr. Brooks also lists in the Motion for Preliminary Injunction the twelve claims for relief he intends to assert in this action, although he still fails to provide a short and plain statement of each claim that shows he is entitled to relief.

On February 23, 2018, Mr. Brooks filed Plaintiff's Motion to Extend CDOC's Printing Policy or Request for Extension of Time to File Amended Complaint (ECF No. 38). He alleges in this motion that his amended complaint is now seventy-two pages long and that he was unable to hand-write the remaining pages of his amended complaint prior to the February 22 deadline to file an amended complaint. As relief he again asks the court to order the DOC to allow him to print his entire amended complaint at his own expense or, in the alternative, to grant an extension of 180 days to produce a handwritten

copy of the amended complaint.

The court must construe the papers filed by Mr. Brooks liberally because he 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). However, the court should not be an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. Mr. Brooks will be given one more opportunity to file a signed and complete amended complaint that provides a short and plain statement of the claims he wishes to pursue in this action.

As noted above, Mr. Brooks fails to provide in any pleading or other document filed in this action a short and plain statement of his claims showing he is entitled to relief. 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 (10th Cir. 1989). The requirements of Rule 8 of the Federal Rules of Civil Procedure 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 (10th 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.

The Verified Prisoner Complaint With Jury Demand (ECF No. 35), which is less than half the length of the amended complaint Mr. Brooks alleges he has prepared, consists largely of redundant and unnecessary background information and does not include any claims for relief. Mr. Brooks does list twelve claims for relief in the Motion for Preliminary Injunction (ECF No. 36) in approximately fifteen pages of typewritten, single-spaced text. However, he does not provide a *clear and concise* statement of each claim that demonstrates he is entitled to relief. It also appears that the twelve claims, which raise issues relating to prison law library policies and procedures, prison disciplinary proceedings, state court postconviction proceedings, medical care, and a prison job assignment, are not properly joined in a single lawsuit against all of the Defendants listed in the caption of the Verified Prisoner Complaint With Jury Demand.

Mr. Brooks will be given one more opportunity to file an amended complaint that complies with the pleading requirements of Rule 8. Mr. Brooks is advised that, as set forth in the instructions accompanying the court-approved Prisoner Complaint form, his amended complaint may not exceed thirty pages. Therefore, Plaintiff's Motion to Extend CDOC's Printing Policy or Request for Extension of Time to File Amended Complaint (ECF No. 38) will be denied.

In order to comply with the pleading requirements of Rule 8 Mr. Brooks must present his claims clearly and concisely in a format that allows the court and Defendants to know what claims are being asserted and to be able to respond to those claims. Thus,

Mr. Brooks must identify the specific claims being asserted, against which Defendant or Defendants each claim is asserted, the specific facts that support 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 (10th 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 (10th Cir. 2005); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."). Furthermore, "[i]t 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 (10th Cir. 1957).

The court emphasizes that allegations of "personal participation in the specific constitutional violation complained of [are] essential." *Henry v. Storey*, 658 F.3d 1235, 1241 (10th Cir. 2011); *see also Foote v. Spiegel*, 118 F.3d 1416, 1423 (10th Cir. 1997) ("[i]ndividual liability . . . must be based on personal involvement in the alleged constitutional violation."). Furthermore,

> [b]ecause § 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. It is particularly important that

> plaintiffs make clear exactly *who* is alleged to have done *what* to *whom,* . . . as distinguished from collective allegations. When various officials have taken different actions with respect to a plaintiff, the plaintiff's facile, passive-voice showing that his rights "were violated" will not suffice. Likewise insufficient is a plaintiff's more active-voice yet undifferentiated contention that "defendants" infringed his rights.

Pahls v. Thomas, 718 F.3d 1210, 1225-26 (10th Cir. 2013) (internal citations and quotation marks omitted).

Finally, pursuant to Rule 18(a) of the Federal Rules of Civil Procedure, "[a] party asserting a claim . . . may join, as independent or alternative claims, as many claims as it has against an opposing party." However, the issue of whether multiple Defendants may be joined in a single action is governed by Rule 20(a)(2) of the Federal Rules of Civil Procedure, which provides:

> (2) ***Defendants***. Persons . . . may be joined in one action as defendants if:
>
> > (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
> >
> > (B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a). Requiring adherence in prisoner suits to the federal rules regarding joinder of parties and claims prevents "the sort of morass [a multiple claim, multiple defendant] suit produce[s]." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

For these reasons Mr. Brooks must file a complete and signed amended complaint if he wishes to pursue any claims in this action. Pursuant to Rule 5.1(c) of the Local

Rules of Practice of the United States District Court for the District of Colorado – Civil, "[i]f not filed electronically, an unrepresented prisoner or party shall use the procedures, forms, and instructions posted on the court's website." Therefore, Mr. Brooks will be directed to file his amended pleading on the court-approved Prisoner Complaint form that recently was revised. The court reiterates that the amended complaint may not exceed thirty pages. Accordingly, it is

ORDERED that Plaintiff's Motion to Extend CDOC's Printing Policy or Request for Extension of Time to File Amended Complaint (ECF No. 38) is denied. It is

FURTHER ORDERED that Mr. Brooks file, **within thirty (30) days from the date of this order**, an amended complaint no longer than thirty pages as directed in this order. It is

FURTHER ORDERED that Mr. Brooks shall obtain the court-approved Prisoner Complaint form that recently was revised (with the assistance of his case manager or the facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

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

DATED March 1, 2018, at Denver, Colorado.

BY THE COURT:

APPENDIX E

FILED
United States Court of Appeals
Tenth Circuit

March 15, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JASON BROOKS,

Plaintiff - Appellant,

v.

COLORADO DEPARTMENT OF CORRECTIONS, et al.,

Defendants - Appellees.

No. 18-1266

ORDER

Before **McHUGH**, **BALDOCK**, and **O'BRIEN**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk