APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Susan Prose, United States Magistrate Judge

Civil Action No. 23-cv-01627-LTB-SBP

RODNEY DOUGLAS EAVES,

Plaintiff,

v.

MS. KORY,
JERRY ROARK,
DANNY SALAZAR,
MR. CHAVEZ,
THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
SUSAN WOLLERT,
ANGIE TURNER,
JANE DOE #1,
MARSHALL GRIFFITH,
JANE DOE #2, and
JANE DOE #3,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on the amended Prisoner Complaint (ECF No. 10)[1] filed *pro se* by Plaintiff, Rodney Douglas Eaves, on October 13, 2023. The matter has been referred to this Magistrate Judge for recommendation (ECF No. 12.)[2]

[1] "(ECF No. 10)" is an example of the convention I use to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). I use this convention throughout this Recommendation.

[2] Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are

The Court must construe the amended Prisoner Complaint liberally because Mr. Eaves 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.

The Court has reviewed the filings to date. The Court has considered the entire case file, the applicable law, and is sufficiently advised in the premises. It is respectfully recommended that the amended Prisoner Complaint be dismissed.

I. DISCUSSION

Background

Mr. Eaves is a prisoner in the custody of the Colorado Department of Corrections ("DOC"). On June 26, 2023, while he was housed at the Bent County Correctional Facility ("BCCF") in Las Animas, Colorado, Mr. Eaves filed a Prisoner Complaint (ECF No. 1). The BCCF is a private prison operated by CoreCivic. On July 20, 2023, Mr. Eaves was ordered to file an amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. On September 18, 2023, Mr. Eaves filed a notice of change of address (ECF No. 9) stating he had been transferred to the Fremont Correctional Facility in Cañon City, Colorado. As noted above, Mr. Eaves filed an amended Prisoner Complaint on October 13, 2023.

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being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States v. Raddatz*, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The Amended Prisoner Complaint

Mr. Eaves asserts two claims pursuant to 42 U.S.C. §.1983 challenging the conditions of his confinement at the BCCF. In both claims Mr. Eaves contends he was subjected to cruel and unusual punishment in violation of the Eighth Amendment and denied substantive due process in violation of the Fourteenth Amendment. The claims relate to Mr. Eaves contracting COVID-19 in November 2020 and the medical treatment he received for his symptoms thereafter. The named Defendants are eight BCCF employees (Ms. Kory, Warden Jerry Roark, Unit Manager Danny Salazar, Unit Manager Chavez, Medical Practitioner Susan Wollert, Medical Practitioner Angie Turner, Medical Practitioner Jane Doe #2, and Medical Practitioner Jane Doe #3), two DOC employees (Director of Clinical and Correctional Services Jane Doe #1 and Grievance Officer Marshall Griffith), and the Colorado Department of Public Health and Environment ("CDPHE"). The BCCF employees are sued only in their individual capacities. The DOC employees are sued in both their individual and official capacities. Mr. Eaves seeks damages as well as declaratory and injunctive relief.

- **Claim One**

Mr. Eaves alleges in claim one that COVID-19 impacted the BCCF during the last week of October 2020 and that he and his cellmate were among a group of seven inmates in his unit (out of one hundred) who remained negative. He further alleges that on November 28, 2020, he was forced to move to another unit where inmates were still testing positive and new cases were being reported, and he was placed in a cell with an inmate who was experiencing symptoms even though open cells were available in which he and his roommate could have been housed. Mr.

Eaves also alleges he got really sick and tested positive for COVID-19 the next week, after which he was moved out of his cell and housed in an open dorm in close proximity to eighty other inmates.

Claim one primarily is asserted against Defendants Kory, Roark, Salazar, Chavez, CDPHE, and Jane Doe #1. Without alleging specifically what each Defendant did or failed to do, Mr. Eaves alleges these six Defendants made a conscious choice not to follow CDC quarantine guidelines when he was moved to the new unit; disregarded his health and safety by housing him with an inmate who was experiencing symptoms; disregarded his health and safety by moving him a second time while he was ill; failed to answer an emergency grievance he filed on November 29, 2020; and failed to address the concerns he raised in a step one grievance he filed on January 3, 2021.

Mr. Eaves also alleges in claim one that Defendants CDPHE and Jane Doe #1 were deliberately indifferent to his health and safety because Defendant Turner stated in a response to Mr. Eaves' step two grievance that the DOC and a CDPHE epidemiologist made the determination for his housing assignment.

Also, Defendants Wollert and Turner allegedly were deliberately indifferent to Mr. Eaves' health and safety because they failed to address the concerns he raised in his step one and step two grievances and told him he could fill out a form to pay for his own health care.

Finally, Defendant Griffith allegedly was deliberately indifferent to Mr. Eaves' serious medical needs by denying a step three grievance as untimely on May 7, 2021, rather than forwarding the matter to clinical services so Mr. Eaves could receive proper medical care for the

concerns listed in a medical kite attached to the step three grievance.

• **Claim Two**

Mr. Eaves contends in claim two that all Defendants failed to adhere to DOC policy and were part of a complete breakdown in the provision of medical care at the BCCF. Parts of claim two are repetitive of claim one. For example, Mr. Eaves alleges again that Defendants Kory, Roark, Salazar, Chavez, CDPHE, and Jane Doe #1 moved him to an open dorm environment and Defendants Wollert and Turner told him in response to grievances that he would have to pay for his own medical care. Mr. Eaves also alleges in claim two that he submitted a request to be seen by medical on February 10, 2021, and Jane Doe #2 failed to forward the request or schedule an appointment; Defendants Roark, CDPHE and Jane Doe #1 allowed CoreCivic to operate BCCF medical services when CoreCivic is not a licensed health care provider in Colorado, and did not ensure Defendants Turner, Wollert, Jane Doe #2, and Jane Doe #3 were practicing nursing under the supervision of a licensed health care provider; Defendants Roark, CDPHE, Jane Doe #1, Griffith, Turner, Wollert, Jane Doe #2, and Jane Doe #3 did not ensure professional nursing was being provided and allowed BCCF to operate without regard to state statutes and DOC policy; Defendant Jane Doe #3 responded to a medical kite Mr. Eaves submitted on April 10, 2022, regarding his sense of smell by telling him there was no treatment at that time and his sense of smell may never return; and Defendants Kory, Roark, Salazar, Chavez, CDPHE, Jane Doe #1, and Griffith had not implemented by November 2020 various prevention and screening protocols and procedures adopted by other public and private institutions in response to the COVID-19 pandemic.

Rule 8

The twin purposes of a pleading 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); *see also Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (stating that 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 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." Furthermore, 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. As a result, prolix, vague, or unintelligible pleadings violate the requirements of Rule 8.

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."); *Ketchum v. Cruz*, 775 F. Supp. 1399, 1403 (D. Colo. 1991) (vague and conclusory allegations that their rights have been violated do not entitle *pro se* pleaders to a day in court regardless of how liberally the pleadings are construed), *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.

Claims Against DOC and CDPHE

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, to the extent Mr. Eaves is asserting claims against DOC Defendants in their official capacities, the claims must be construed as being asserted against the DOC.

The DOC and the CDPHE are agencies of the State of Colorado. *See* Colo. Rev. Stat. § 24-1-119 (CDPHE); Colo. Rev. Stat. § 24-1-128.5 (DOC). As such, they are protected by Eleventh Amendment immunity. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989); *see also Duncan v. Gunter*, 15 F.3d 989, 991 (10th Cir. 1994) ("Neither states nor state officers sued in their official capacities are 'persons' subject to suit under section 1983.").

The Eleventh Amendment does not bar a federal court action seeking prospective injunctive relief from a state official acting in his or her official capacity. *See Hill v. Kemp*, 478 F.3d 1236, 1255-56 (10th Cir. 2007). But, because Mr. Eaves no longer is confined at the BCCF, any claims for injunctive relief regarding the conditions of his confinement at that facility are

moot. *See Jordan v. Sosa*, 654 F.3d 1012, 1027-28 (10th Cir. 2011).

Deliberate Indifference to Serious Medical Needs

Mr. Eaves was advised in the order directing him to file an amended complaint that the medical treatment claims properly are asserted under the Eighth Amendment rather than the Fourteenth Amendment because the Eighth Amendment "serves as the primary source of substantive protection to convicted prisoners." *Whitley v. Albers*, 475 U.S. 312, 327 (1986). He also was advised that he must allege specific facts that demonstrate what each Defendant did or failed to do that allegedly violated his federal rights because 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) ("Individual liability . . . must be based on personal involvement in the alleged constitutional violation.").

> 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. 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) (cleaned up). There is no vicarious liability under § 1983. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Although a defendant can be liable based on his or her supervisory responsibilities, a claim of supervisory liability must be supported by allegations that demonstrate personal involvement, a causal connection to the constitutional violation, and a culpable state of mind. *See Schneider v. City of Grand Junction*

Police Dep't, 717 F.3d 760, 767-69 (10th Cir. 2013) (discussing standards for supervisory liability). Furthermore, the "denial of a grievance, by itself without any connection to the 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).

In the context of an Eighth Amendment medical treatment claim, Mr. Eaves must allege specific facts that demonstrate each Defendant was deliberately indifferent to his serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976). "A claim of deliberate indifference includes both an objective and a subjective component." *Al-Turki v. Robinson*, 762 F.3d 1188, 1192 (10th Cir. 2014). "A medical need is considered sufficiently serious to satisfy the objective prong if the condition has been diagnosed by a physician as mandating treatment or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Id.* at 1192-93 (cleaned up). Under the subjective prong, "a prison official may be held liable . . . only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Despite these advisements, Mr. Eaves employs a shotgun approach to pleading that connects various combinations of Defendants to conclusory allegations that they were deliberately indifferent to his health and safety. He does not identify specifically what each Defendant did or failed to do that allegedly violated his rights. And when he does identify the acts of a specific Defendant, such as the allegations that Jane Doe #2 failed to forward a medical request or schedule an appointment on February 10, 2021, or that Jane Doe #3 responded to a medical kite on April 10, 2022, by telling Mr. Eaves there was no treatment at that time and his

sense of smell may never return, he does not allege specific facts that demonstrate those Defendants knew he faced a substantial risk of serious harm and failed to take reasonable measures to abate the risk. Similarly, Mr. Eaves' allegations that certain Defendants denied grievances are not sufficient to demonstrate those Defendants knew he faced a substantial risk of serious harm and failed to take reasonable measures to abate the risk.

For these reasons, the Court concludes that Mr. Eaves fails to provide a short and plain statement of his medical treatment claims demonstrating he is entitled to relief.

II. RECOMMENDATION

For the reasons set forth herein, it is respectfully

RECOMMENDED that the amended Prisoner Complaint (ECF No. 10) and the action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with the pleading requirements of Rule 8.

DATED November 30, 2023.

BY THE COURT:

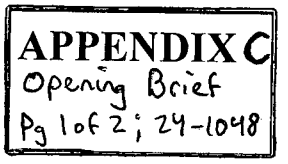
Susan Prose
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-01627-LTB-SBP

RODNEY DOUGLAS EAVES,

Plaintiff,



v.

MS. KORY,
JERRY ROARK,
DANNY SALAZAR,
MR. CHAVEZ,
THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
SUSAN WOLLERT,
ANGIE TURNER,
JANE DOE #1,
MARSHALL GRIFFITH,
JANE DOE #2, and
JANE DOE #3,

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge filed on November 30, 2023 (ECF No. 13). The Recommendation states that any objection to the Recommendation must be filed within fourteen days after its service. *See* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served by mail on November 30, 2023, so an additional three days are added pursuant to Rule 6(d) of the Federal Rules of Civil Procedure. On December 15, 2023, within the time allowed to file objections, Plaintiff submitted to prison officials for mailing his "Objection to Magistrate Juge's Recommendation to Dismiss" (ECF No. 14). Based on the prison

mailbox rule, *see Price v. Philpot*, 420 F.3d 1158, 1163-66 (10th Cir. 2005), the Court finds that the objections are timely. On *de novo* review the Court concludes that the Recommendation is correct.

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 13) is accepted and adopted. It is

FURTHER ORDERED that the amended Prisoner Complaint (ECF No. 10) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiff failed to comply with the pleading requirements of Rule 8. 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. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith.

DATED: January 16, 2024

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-01627-LTB-SBP

APPENDIX D

RODNEY DOUGLAS EAVES,

Plaintiff,

v.

MS. KORY,
JERRY ROARK,
DANNY SALAZAR,
MR. CHAVEZ,
THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
SUSAN WOLLERT,
ANGIE TURNER,
JANE DOE #1,
MARSHALL GRIFFITH,
JANE DOE #2, and
JANE DOE #3,

Defendants.

JUDGMENT

Pursuant to and in accordance with the Order entered by Lewis T. Babcock, Senior District Judge, on January 16, 2024, it is hereby

ORDERED that Judgment is entered in favor of Defendants and against Plaintiff.

DATED at Denver, Colorado, this 16 day of January, 2024.

FOR THE COURT,

JEFFREY P. COLWELL, Clerk

By: s/C. Madrid
Deputy Clerk

FILED
United States Court of Appeals
Tenth Circuit

May 30, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RODNEY DOUGLAS EAVES,

Plaintiff - Appellant,

v.

MS. KORY; JERRY ROARK; DANNY SALAZAR; MR. CHAVEZ; THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; SUSAN WOLLERT; ANGIE TURNER; MARSHALL GRIFFITH; JANE DOE #2; JANE DOE #3,

Defendants - Appellees.

No. 24-1048
(D.C. No. 1:23-CV-01627-LTB-SBP)
(D. Colo.)

APPENDIX
E

ORDER AND JUDGMENT*

Before **EID**, **KELLY**, and **ROSSMAN**, Circuit Judges.**

Plaintiff-Appellant Rodney Douglas Eaves appeals from the district court's dismissal of his complaint for failure to comply with pleading requirements. See Fed. R. Civ. P. 8(a). Acting pro se, Mr. Eaves brought several claims under 42

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* 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.

** 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.

U.S.C. § 1983 against employees of the Colorado Department of Corrections (CDOC), the Bent County Correctional Facility (BCCF), a private prison operated by CoreCivic, and the Colorado Department of Public Health and Environment (CDPHE) alleging violations of his constitutional rights, specifically, the Eighth Amendment prohibition on cruel and unusual punishment and Fourteenth Amendment substantive due process, arising from his confinement during the COVID-19 pandemic. R. 28–32. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Background

In his amended complaint, Mr. Eaves alleged that he was forcibly relocated to a housing unit where inmates were actively testing positive for COVID-19 and that he contracted the disease as a result. He further alleged that he received deficient medical care and that officials ignored his formal grievances. The magistrate judge recommended dismissal of Mr. Eaves's claims against CDPHE and CDOC employees in their official capacity. The Eleventh Amendment bars all suits against the state except those seeking prospective injunctive relief. Hill v. Kemp, 478 F.3d 1236, 1255–56 (10th Cir. 2007). Mr. Eaves was no longer confined at BCCF when he filed his amended complaint, so his claims for injunctive relief were moot. As to the remaining claims, the magistrate judge recommended dismissal due to Mr. Eaves's failure to comply with pleading requirements. R. 60–62; see Fed. R. Civ. P. 8(a). The court reasoned that Mr. Eaves employed a "shotgun approach to pleading"

without specifying how each defendant harmed him or whether the defendants were deliberately indifferent to a substantial risk of serious harm. R. 61–62. Over several objections by Mr. Eaves, the district court accepted and adopted the magistrate judge's recommendation and dismissed the complaint without prejudice for failure to comply with the pleading requirements of Rule 8. See Fed. R. Civ. P. 41(b).

Discussion

We review a dismissal under Rule 41(b) for an abuse of discretion. See Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 (10th Cir. 2007). Rule 8(a)(2) states that the complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Detailed allegations are unnecessary, but the complaint must contain something more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Given Mr. Eaves's pro se status, we construe his amended complaint liberally. See Smith v. Allbaugh, 921 F.3d 1261, 1268 (10th Cir. 2019). We begin with Mr. Eaves's individual claims under the Eighth Amendment.

A. Eighth Amendment Claims

To succeed on his Eighth Amendment claims, Mr. Eaves must demonstrate that the alleged deprivation was "sufficiently serious" and that the individual defendants were deliberately indifferent to Mr. Eaves's health or safety. Farmer v.

Brennan, 511 U.S. 825, 834 (1994) (citation omitted).[1] In the medical context, prison officials act with deliberate indifference when they fail to take reasonable measures to abate a substantial risk of serious harm. Id. at 847. The plaintiff must demonstrate "the prison official's culpable state of mind" by showing the official "knows of and disregards an excessive risk to inmate health or safety." Paugh v. Uintah Cnty., 47 F.4th 1139, 1156 (10th Cir. 2022) (citations omitted).

Assuming Mr. Eaves's exposure to COVID-19 was sufficiently serious, he has failed to adequately plead that individual officials were deliberately indifferent to this risk. As the magistrate judge observed, the bulk of his complaint alleges actions taken by groups of defendants without specifying each defendant's personal role in the alleged constitutional deprivation. "Individual liability under § 1983 must be based on personal involvement in the alleged constitutional violation." Foote v. Spiegel, 118 F.3d 1416, 1423 (10th Cir. 1997).

Even when Mr. Eaves mentions specific defendants, he fails to allege why their actions were unreasonable given the circumstances — let alone whether they had any authority to correct the alleged constitutional deprivation in the first place. Mr. Eaves argues that the denial of his grievances amounted to a constitutional violation, but "denial of a grievance, by itself without any connection to the violation of constitutional rights alleged . . . does not establish personal participation under § 1983." Gallagher v. Shelton, 587 F.3d 1063, 1069 (10th Cir. 2009). He has not

[1] We reject Mr. Eaves's argument that Fourteenth Amendment substantive due process provides a separate basis for his § 1983 claim.

made that connection. At most, Mr. Eaves's complaint alleges negligent conduct by CDOC and BCCF officials. And mere negligence, such as an accident or "an inadvertent failure to provide adequate medical care[,]" does not constitute the "unnecessary and wanton infliction of pain" prohibited by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104–05 (1976) (citation omitted).

B. Eleventh Amendment Sovereign Immunity

The district court did not abuse its discretion in dismissing Mr. Eaves's claims against CDOC and CDPHE employees in their official capacity, which are suits against state entities. Generally, the Eleventh Amendment bars suits against the states, except those which target state officers acting in their official capacities and seek prospective, injunctive relief. Hill, 478 F.3d at 1255–56 (citing Ex Parte Young, 209 U.S. 123 (1908)). Mr. Eaves has been transferred from BCCF, and his claim that CDOC officials and CDPHE supervise care in all Colorado correctional facilities is far too general. His claim (to the extent it is not barred) is therefore moot. Further, Mr. Eaves cannot invoke the mootness exception "where the underlying dispute is capable of repetition, yet evading review" because he has not shown a reasonable expectation that he will be subjected to the same alleged constitutional violations again. See Buchheit v. Green, 705 F.3d 1157, 1160 (10th Cir. 2012) (internal quotation marks and citation omitted).

Accordingly, the district court's judgment is AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

Additional material from this filing is available in the Clerk's Office.