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9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13 SEAN DAVID MORTON and MELISSA MORTON,) NO. CV 09-1875-PA (JCx)
 14)
)
 15 Plaintiffs,) DEFENDANTS' NOTICE OF
) MOTION AND MOTION TO
 16 v.) DISMISS, OR IN THE
) ALTERNATIVE FOR A MORE
 17 BENNETT ELLENBOGEN, TIM JOHNSON, ERIC) DEFINITE STATEMENT;
) MEMORANDUM OF POINTS AND
 18 HOLDER, JR., Attorney General of the) AUTHORITIES.
)
 19 United States, THOMAS P. O'BRIEN, U.S.)
)
) [Hon. Percy Anderson]
 20)
)
 21 Defendants.)
)

) DATE: June 15, 2009
) TIME: 1:30 p.m.
) CTRM: 15

22
 23 NOTICE OF MOTION AND MOTION TO DISMISS, OR IN THE ALTERNATIVE FOR
 24 A MORE DEFINITE STATEMENT

25 PLEASE TAKE NOTICE that on June 15, 2009 at 1:30 p.m., or as
 26 soon thereafter as counsel may be heard, in the Courtroom of the
 27 Honorable Percy Anderson, United States District Judge, located
 28 at 312 North Spring Street, Los Angeles, CA 90012, defendants
 will move to dismiss the action because the complaint fails to

1 comply with the pleading requirements of Fed. R. Civ. P. 8. In
2 the alternative, defendants will move for a more definite
3 statement pursuant to Fed. R. Civ. P. 12(e).

4 This motion is made on the grounds that the complaint fails
5 to contain a short and plain statement of the claim showing that
6 the pleader is entitled to relief, and the averments of the
7 complaint are not simple, concise and direct.

8 This motion is based on this Notice of Motion and Motion,
9 upon the Memorandum of Points and Authorities, and upon such
10 arguments as the Court may allow at the time of the hearing.

11 The parties did not conduct a Local Rule 7-3 meet and confer
12 because Plaintiffs are in *pro se*.

13 DATED: May 18, 2009.

Respectfully submitted,

14 THOMAS P. O'BRIEN
15 United States Attorney
16 LEON W. WEIDMAN
17 Chief, Civil Division
18 Assistant United States Attorney

19 /s/ Richard Park
20 RICHARD M. PARK
21 Assistant United States Attorney

22 Attorneys for Federal Defendants
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Plaintiffs Sean David Morton and Melissa Morton, acting in
5 *pro se*, have filed a 31-page, 144-paragraph complaint in which
6 they (1) assert nine random grounds for federal court
7 jurisdiction, (2) fail to identify how two of the four
8 defendants¹ are involved in the complaint and (3) provide
9 inadequate factual support for any of their causes of action.

10 Generally, plaintiffs allege that they are the targets of an
11 unjustified investigation by the Securities and Exchange
12 Commission ("SEC") for their involvement in certain investment-
13 related activities. See Complaint, ¶¶ 20, 67. In connection
14 with the investigation, Plaintiffs seem to claim that defendants
15 Bennett Ellenbogen and Stephen Johnson², two SEC attorneys, have
16 committed mail and wire fraud, see id., ¶¶ 20, 67, which entitles
17 plaintiffs to present evidence to a grand jury. See Id., ¶¶ 112-
18 120. Finally, plaintiffs submit rambling and argumentative prose
19 regarding their beliefs that federal judges are subject to
20 pressure and intimidation by the United States Department of
21 Justice. See Id., ¶¶ 70-102, 122-144.

22 _____
23 ¹ Except for being listed as named defendants in the
24 complaint, Eric Holder, Jr., Attorney General for the United
25 States, and Thomas P. O'Brien, United States Attorney for the
26 Central District of California are not cited anywhere in the
27 factual allegations, causes of action, or relief requested. As
28 such, plaintiffs' inclusion of these defendants improperly adds
to the ambiguity and confusion in the complaint.

² The correct name for named defendant "Tim Johnson" is in
fact "Stephen Johnson"

1 Because of the vagueness and ambiguity of plaintiffs' claims
2 and lack of specific supporting facts, defendants hereby move to
3 dismiss the action or, in the alternative, for a more definite
4 statement pursuant to Rule 12(e) of the Federal Rules of Civil
5 Procedure, on the ground that the complaint fails to comply with
6 the pleading requirements of Rule 8.

7 **II.**

8 **THE COURT SHOULD DISMISS THIS ACTION OR ORDER PLAINTIFFS TO FILE**
9 **A MORE DEFINITE STATEMENT OF THEIR CLAIMS IN A FIRST AMENDED**
10 **COMPLAINT**

11 A. **The Complaint Should Be Dismissed Pursuant to Rule 8**

12 Federal Rule of Civil Procedure 8(a)(2) requires "a short
13 and plain statement of the claim showing that the pleader is
14 entitled to relief." Rule 8(d)(1) provides that "each allegation
15 must be simple, concise, and direct." "A complaint which fails
16 to comply with Rules 8(a) and 8(e) may be dismissed with
17 prejudice pursuant to Rule 41(b)." Nevijel v. Northcoast Life
18 Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981) (emphasis added).

19 Notwithstanding the liberal pleading requirements of the
20 Federal Rules of Civil Procedure, a plaintiff is required to
21 state a claim with "brevity, conciseness and clarity" which will
22 "discharge the function of giving the other party fair notice of
23 the nature and basis or grounds of the claim and a general
24 indication of the type of litigation involved." 5 Wright and
25 Miller, Federal Practice and Procedure, § 1215, at 136-38 (2d ed.
26 1990); see also Fed. R. Civ. P. 8(a). It is well-settled that a
27 district court has discretion to dismiss an action for failure to
28 comply with the requirements of Rule 8 where the complaint is so

1 "verbose, confused and redundant that its true substance, if any,
2 is well-disguised." Corcoran v. Yorty, 347 F.2d 222, 223 (9th
3 Cir. 1965)

4 To that end, the Ninth Circuit has repeatedly held that
5 complaints such as plaintiffs', which fail to comply with the
6 requirements of Rule 8, are subject to dismissal. See, e.g.,
7 McHenry v. Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996)
8 (affirming dismissal of a 53-page third amended complaint that
9 was "argumentative, prolix, replete with redundancy, and largely
10 irrelevant"); Hatch v. Reliance Insurance Co., 758 F.2d 409, 415
11 (9th Cir. 1985) (affirming dismissal of complaints, "which,
12 including attachments, exceeded 70 pages in length, were
13 confusing and conclusory and not in compliance with Rule 8");
14 Nevijel v. North Coast Life Insurance Co., 651 F.2d 671, 673-74
15 (9th Cir. 1981) (affirming a dismissal of a 23-page amended
16 complaint with 24 pages of addenda found to be verbose, confusing
17 and conclusory); Corcoran v. Yorty, 347 F.2d 222, 223 (9th Cir.
18 1964) (per curiam) (affirming dismissal of complaint for alleged
19 fraud and conspiracy in violation of civil rights, where
20 complaint was "so verbose, confused and redundant that its true
21 substance, if any, is well disguised"). "Rule 8(a) requires
22 parties to make their pleadings straightforward, so that judges
23 and adverse parties need not try to fish a gold coin from a
24 bucket of mud." United States ex rel. Garst v. Lockheed-Martin
25 Corp., 328 F.3d 374, 378 (7th Cir. 2003).

26 The complaint fails to comply with the pleading requirements
27 of Rule 8, which makes it impossible for Defendants to frame a
28 meaningful responsive pleading. Far from being a "short and

1 plain statement" of their claims, plaintiffs' 31-page, 144-
2 paragraph complaint devotes much attention to matters not
3 directly related to their claims. For instance, plaintiffs spend
4 a significant part of their complaint defending their actions,
5 which are the subject of an investigation by the Securities and
6 Exchange Commission. See Compl. ¶¶ 11-60. In addition,
7 plaintiffs devote twenty paragraphs to lashing out at federal
8 judges who "ignore the law and evidence in criminal cases in
9 order to uphold criminal convictions," see id. ¶¶ 71-81, which
10 purportedly stemmed from a "1989 Bush directive" to "ignore the
11 Constitutional Rights of defendants in criminal cases. . ." See
12 Compl. ¶¶ 82-102. In addition, the complaint includes confusing
13 and conclusory claims that defendants Ellenbogen and Johnson
14 engaged in mail and wire fraud, see id. ¶¶ 109-110, and verbose
15 and unsupported allegations that federal judges are subject to
16 pressure and intimidation by the United States Department of
17 Justice. See Id., ¶¶ 70-102, 122-144.

18 B. **The Complaint Fails To Comply With The Pleading Requirements**
19 **Of Rules 8 and 12(e) of the Federal Rules of Civil Procedure**

20 Under Rule 12(e) of the Federal Rules of Civil Procedure, a
21 movant seeking a more definite statement "must point out the
22 defects complained of and the details desired." Fed. R. Civ. P.
23 12(e). When a pleading fails to comply with the pleading
24 requirements of Rule 8, a defendant may "move for a more definite
25 statement under Rule 12(e) before responding." Swierkiewicz v.
26 Sorema N.A., 534 U.S. 506, 514, 122 S.Ct. 992, 152 L.Ed.2d 1
27 (2002). A review of the complaint reveals that plaintiffs should
28 provide more clarity and information with respect to the

1 following issues:

- 2 • Specific grounds for the Court's jurisdiction, reduced
3 from the nine random grounds currently listed. See
4 Compl. ¶¶ 82-102.
- 5 • Specific factual allegations or causes of action which
6 require the inclusion of Eric Holder, Jr., Attorney
7 General for the United States, and Thomas P. O'Brien,
8 United States Attorney for the Central District of
9 California as named defendants in the complaint.
- 10 • Factual support, if any, for the First Cause of Action,
11 which seeks mandamus relief. See Id. ¶¶ 103-107.
- 12 • Factual support, if any, for the Second Cause of
13 Action, which alleges mail fraud, wire fraud and/or
14 fraud under 18 U.S.C. § 1346 against certain
15 defendants. See Id. ¶¶ 108-111.
- 16 • Factual support, if any, for the Third Cause of Action,
17 which alleges that the Executive Branch of the federal
18 government, and specifically, the United States
19 Department of Justice are exerting pressure on federal
20 judges. See Id. ¶¶ 122-144.
- 21 • In general, factual support for all of plaintiffs'
22 causes of action which provide legal citations, but
23 virtually no factual support. See Id. ¶¶ 103-144.

24 Accordingly, the complaint fails to satisfy the requirements
25 of Fed. R. Civ. P. 8, and the Court should order plaintiffs to
26 file a more definite statement of their claims.

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III.

CONCLUSION

For the foregoing reasons, defendants respectfully request the Court to dismiss this action pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, order plaintiffs to file a more definite statement of their claims in a first amended complaint in accordance with Rule 8 and 12(e).

DATED: May 18, 2009.

Respectfully submitted,

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LEON W. WEIDMAN
Chief, Civil Division
Assistant United States Attorney

/s/ Richard Park
RICHARD M. PARK
Assistant United States Attorney

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