

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-02730-WYD-BNB

DAVID FRAZIER; and
JUSTIN D. CLAIBORNE,

Plaintiffs,

v.

ARAPAHOE COUNTY WEATHERIZATION DEPARTMENT, an agency of the State of
Colorado,

Defendant.

ORDER

THIS MATTER comes before the Court upon a review of Defendant's Partial Motion to Dismiss filed April 23, 2009, which attaches evidence outside of the pleadings. While the motion states that it is filed under Fed. R. Civ. P. 12(b), it does not state which subsection(s) of the Rule Defendant relies on.

Pursuant to the Federal Rules, if a court considers matters outside of the pleadings, a motion to dismiss pursuant to Rule 12(b)(6) should be treated as a motion for summary judgment. FED. R. CIV. P. 12(b); *Lucero v. Gunter*, 52 F.3d 874, 877 (10th Cir. 1995). While the motion does refer in part to lack of subject matter jurisdiction, which would not require conversion of the motion, it is unclear whether Defendant relies on Rule 12(b)(6) for any other portion of the motion. If the motion does need to be converted to a summary judgment motion, I must also consider whether to strike the motion and have Defendant submit a new summary judgment motion that complies with

my Practice Standards. To assist me in resolving this matter, it is

ORDERED that on or before **Friday, May 1, 2009**, Defendant shall file a brief statement addressing these issues.

Dated: April 23, 2009

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge