

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00249-BNB

BYRON K. ANDREWS, and  
ANDREA P. ANDREWS,

Plaintiffs,

v.

RALPH E. LAYMAN, U.S. Small Business Administration Director,

Defendant.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 23 2009

GREGORY C. LANGHAM  
CLERK

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ORDER TO AMEND COMPLAINT

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Plaintiffs, Byron K. Andrews and Andrea P. Andrews, currently reside in Fort Collins, Colorado. Plaintiffs initiated this action by filing a *pro se* Complaint. In an order entered on February 6, 2009, the Clerk of the Court was directed to commence a civil action. The order also dismissed several Defendants and instructed Plaintiffs to cure certain deficiencies if they desired to pursue their claims.

Specifically, the Plaintiffs were ordered to file their remaining claims on a Court-approved form approved for use in filing *pro se* complaints. Each Plaintiff also was directed to submit a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on an approved form. On February 20, 2009, Plaintiffs submitted their claims on a Court-approved form. Ms. Andrews submitted a Motion and Affidavit as instructed, but Mr. Andrews did not. Nonetheless, the Motion and Affidavit Mr. Andrews originally filed in the action contains sufficient information. The Court, therefore, granted Plaintiffs leave to proceed pursuant to 28 U.S.C. § 1915.

The Court has reviewed the Complaint and has determined that it is deficient because the Complaint does not comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. 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 (10<sup>th</sup> Cir. 1989). The requirements of Fed. R. Civ. P. 8 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 (10<sup>th</sup> 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.

Plaintiffs fail to set forth a short and plain statement establishing the jurisdiction of the Court. Although they assert jurisdiction based on 28 U.S.C. § 1346, nothing in their claims gives rise to jurisdiction under § 1346.

A decision to dismiss a pleading pursuant to Rule 8 is within the trial court's sound discretion. **See *Atkins v. Northwest Airlines, Inc.***, 967 F.2d 1197, 1203 (8<sup>th</sup>

Cir. 1992); *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9<sup>th</sup> Cir. 1969). The Complaint does not meet the requirements of Rule 8 and that Plaintiffs will be given an opportunity to file an Amended Complaint. Accordingly, it is

ORDERED that Plaintiffs shall file, **within thirty days from the date of this Order**, an Amended Complaint that complies with the pleading requirements of Fed. R. Civ. P. 8 as discussed in this Order. It is

FURTHER ORDERED that the Clerk of the Court shall mail to Plaintiffs, together with a copy of this Order, two copies of a current Court-approved Complaint form. It is

FURTHER ORDERED that if Plaintiffs fail within the time allowed to file an Amended Complaint that complies with this Order the action will be dismissed without further notice. It is

FURTHER ORDERED that Plaintiffs' Motion for USMS (Doc. # 11), filed on March 19, 2009, is DENIED as unnecessary and premature.

DATED March 23, 2009, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-00249-BNB

Byron K. Andrews  
Andrea P. Andrews  
1320 S. Lemay Ave.  
Fort Collins, CO 80524

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Complaint form** to the above-named individuals on 3/23/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk