

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

APR 14 2009

GREGORY C. LANGHAM
CLERK

ORDER DIRECTING PLAINTIFFS TO FILE A FINAL
THIRD AMENDED COMPLAINT

Plaintiffs initiated this action by filing a Complaint. In an order filed on March 23, 2009, the Court instructed Plaintiffs to file an Amended Complaint in keeping with Fed. R. Civ. P. 8. In response to the March 23, 2009, Order, Plaintiffs filed individual Amended Complaints. The Court instructed Plaintiffs to file one Second Amended Complaint, which they did on April 7, 2009. The Court will construe the Second Amended Complaint liberally because Plaintiffs are 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 act as an advocate for *pro se* litigants. **See Hall**, 935 F.2d at 1110.

In the Court's March 23, 2009, Order, Plaintiffs were instructed to assert how their claims properly are raised under 28 U.S.C. § 1346. Again, Plaintiffs are instructed one last time to assert proper jurisdiction under § 1346. Plaintiffs' claims are incorrectly asserted against Defendant Ralph E. Layman.

The Court also notes that in ***Andrews v. United States Small Business Administration, et al.***, No. 07-cv-01971-WDM-CBS (May 2, 2008), Plaintiffs' claims against the Small Business Administration (SBA) were deemed Federal Tort Claims Act (FTCA) claims, and the claims were dismissed for failure to exhaust administrative remedies. It appears that Plaintiffs are attempting to raise the same claims against the SBA in the instant action. Plaintiffs, therefore, are instructed to assert, in this case, how and when they exhausted their administrative remedies with respect to their claims asserted against the SBA. Accordingly, it is

ORDERED that Plaintiffs file **within thirty days from the date of this Order** a final Third Amended Complaint in keeping with this Order. It is

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

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

DATED April 14, 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
457 West 7th Street
Loveland, CO 80537

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 4/14/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk