

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-02491-GPG

MICHAEL J. ROSEDALE,

Plaintiff,

v.

CAPITAL ONE BANK (USA) N.A.,

Defendant.

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**ORDER DIRECTING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT**

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Plaintiff Michael J. Rosedale resides in Watkins, Colorado. On November 12, 2015, he filed *pro se* "Plaintiff's Statement of Claim" (ECF No. 1) against Defendant Capital One Bank (USA) N.A. alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* The Court has granted Mr. Rosedale leave to proceed without prepaying fees or costs pursuant to 28 U.S.C. § 1915.

The Court construes Plaintiff's filings liberally because he 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 (10<sup>th</sup> Cir. 1991). However, the Court cannot act as an advocate for a *pro se* litigant. *See Hall*, 935 F.2d at 1110. As part of the Court's review pursuant to D.C.COLO.LCivR 8.1(a), the Court has determined that the complaint is deficient as described in this order. Plaintiff will be directed to cure the following if he wishes to pursue any claims in this action.

**28 U.S.C. § 1915 Motion and Affidavit:**

- (1) \_\_\_ is not submitted
- (2) \_\_\_ is missing affidavit
- (3) \_\_\_ is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing
- (4) \_\_\_ is missing certificate showing current balance in prison account

- (5) \_\_\_ is missing required financial information
- (6) \_\_\_ is missing authorization to calculate and disburse filing fee payments
- (7) \_\_\_ is missing an original signature by the prisoner
- (8) \_\_\_ is not on proper form (must use the court's current form)
- (9) \_\_\_ names in caption do not match names in caption of complaint, petition or habeas application
- (10) \_\_\_ other:.

**Complaint, Petition or Application:**

- (11) \_\_\_ is not submitted
- (12) xx is not on proper form (must use the court-approved form)
- (13) \_\_\_ is missing an original signature by the prisoner
- (14) \_\_\_ is missing page nos. \_\_\_
- (15) \_\_\_ uses et al. instead of listing all parties in caption
- (16) \_\_\_ names in caption do not match names in text
- (17) \_\_\_ addresses must be provided for all defendants/respondents in "Section A. Parties" of complaint, petition or habeas application
- (18) \_\_\_ other: \_\_\_\_\_.

In addition, Plaintiff will be directed to file an amended complaint that complies with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. In the "Statement of Claim," Plaintiff fails to provide a clear and concise statement of each claim that demonstrates he 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). In this regard, Plaintiff asserts violations of the Fair Credit Reporting Act (FCRA) against Defendant. Plaintiff is advised that the FCRA imposes a duty on persons who provide information to credit reporting agencies ("furnishers") to accurately report information. 15 U.S.C. § 1681s-2(a). While it also gives consumers a private right of action against those who violate its provisions, see 15 U.S.C. § 1681n (right of action against willful violators); 15 U.S.C. § 1681o (right of action against negligent violators), that right of action is limited to claims against the credit reporting agency; it does not extend to furnishers to agencies. *Sanders v. Mountain America Federal Credit*

*Union*, 689 F.3d 1138, 1147 (10<sup>th</sup> Cir. 2012). Under the FCRA, “[w]hen a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” 15 U.S.C. § 1681 e(b). “Once a consumer report exists, [the FCRA] triggers various duties on the part of a reporting agency, including the obligation to reinvestigate when a consumer contends that [her] consumer report is inaccurate or incomplete.” *Ruffin–Thompkins v. Experian Info. Solutions, Inc.*, 422 F.3d 603, 607 (7<sup>th</sup> Cir. 2005) (quotation omitted) (alterations in original). If a consumer reporting agency negligently violates a duty imposed by the FCRA, actual damages, costs and fees are available. 15 U.S.C. § 1681o. In the case of a willful violation of the statute, punitive damages are also available. 15 U.S.C. § 1681n. There is a two-year statute of limitations governing suits based on FCRA. 15 U.S.C. § 1681p. See *TRW Inc. v. Andrews*, 534 U.S. 19, 22 (2001).

The Court has reviewed “Plaintiff’s Statement of Claim” and finds that Plaintiff fails to provide a short and plain statement of his claims in compliance with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. A decision to dismiss a complaint 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 Court, however, will give Plaintiff one more opportunity to cure the deficiencies in the Complaint by submitting an amended Complaint on the proper court-approved form that meets the requirements of Fed. R. Civ. P. 8.

Accordingly, it is

**ORDERED** that **within thirty days from the date of this Order**, Plaintiff shall file an amended complaint that complies with this Order. It is

**FURTHER ORDERED** that Plaintiff shall obtain the Court-approved Complaint form, along with the applicable instructions, at [www.cod.uscourts.gov](http://www.cod.uscourts.gov), to be used in filing the amended complaint. It is

**FURTHER ORDERED** that if Plaintiff fails to comply with this Order within the time allowed the Court will dismiss the action without further notice.

DATED November 20, 2015, at Denver, Colorado.

BY THE COURT:

S/ Gordon P. Gallagher

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Gordon P. Gallagher  
United States Magistrate Judge