

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MELISSA SMITH,

Plaintiff,

v.

No. 17cv1021 JCH/KRS

MICHAEL HARTLEY and
JAKE VU,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on *pro se* Plaintiff's Amended Complaint, Doc. 13, filed December 20, 2017. For the reasons stated below, the Court will **DISMISS** this case **without prejudice**.

Plaintiff's original Complaint alleged that while she "went through all the proper procedures," Defendants did not follow the proper procedure, abused their authority and did not issue a patent to Plaintiff. *See* Complaint at 1-2. Plaintiff sought "All rights to my invention, all back compensation and my patent being approved." Complaint at 5.

The Court dismissed Plaintiff's Complaint for lack of jurisdiction and for failure to state a claim. Plaintiff's Complaint did not contain "a short and plain statement of the grounds for the court's jurisdiction" as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure. In addition, Plaintiff filed her Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983" and checked the box indicating that Defendants were acting under color of state law. However, there were no factual allegations showing that Defendants are state actors.

The Court notified Plaintiff that as the party seeking to invoke the jurisdiction of this Court, she bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733

F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988)). The Court granted Plaintiff leave to file an amended complaint.

Plaintiff’s Amended Complaint, parts of which are difficult to understand or illegible, makes additional allegations regarding her experience with the patent application process but does not contain “a short and plain statement of the grounds for the court’s jurisdiction” as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure. The Court will, therefore, dismiss this case. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

IT IS ORDERED that this case is **DISMISSED without prejudice**.



UNITED STATES DISTRICT JUDGE