

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.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE,

Defendant.

ORDER

THIS MOTION is before the Court on Plaintiffs' Unopposed Motion for Clarification of Order Denying Motion to Dismiss. Plaintiffs assert in the motion that the Court granted Defendant's Motion to Dismiss as to the Third Claim for Relief based on the assumption that this claim related to Title VII, and that the acts in that claim were discrete discriminatory acts for which separate Title VII charges must be filed. Plaintiffs clarify, however, that the Third Claim for Relief is based on 42 U.S.C. § 1981, not Title VII. Plaintiffs are correct that my Order of March 10, 2010, was not meant to dismiss the claims based on § 1981. Accordingly, the portion of the Order dismissing the Third Claim under § 1981 was a mistake.

As a remedy to this situation, Plaintiffs state that they intend to request leave again to amend the complaint upon receiving a Notice of Right to Sue with respect to a more recent EEOC charge Plaintiff Frazier has filed arising out of his termination. Accordingly, they believe that the simplest way to correct the situation is to clarify that

the dismissal of the Third Claim for Relief is without prejudice. I find that this request is appropriate and should be granted. Accordingly, it is

ORDERED that Plaintiffs' Unopposed Motion for Clarification of Order Denying Motion to Dismiss (doc. # 74 filed March 18, 2010) is **GRANTED**. In accordance therewith, it is

ORDERED that the Order of March 10, 2010, is clarified to make clear that the Third Claim for Relief is **DISMISSED WITHOUT PREJUDICE**.

Dated: March 22, 2010

BY THE COURT:

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