

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00004-PAB-MJW

THOMAS R. LEWIS,

Plaintiff(s),

v.

DENVER FIRE DEPARTMENT, et al.,

Defendant(s).

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby **ORDERED** that the plaintiff's Motion for Leave to File the Attached Amended Complaint (Docket No. 12) is **granted**, and the tendered Amended Complaint (Docket No. 12-2) is accepted for filing as of the date of this Minute Order.

Here, plaintiff may file the tendered amended pleading as a matter of course; leave of court or written consent of the opposing party is not required. Defendant misstates Fed. R. Civ. P. 15(a)(1). According to that Rule, "[a] party may amend its pleading once as a matter of course: (A) before being served with a responsive pleading; or (B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar." Fed. R. Civ. P. 15(a)(1). In this case, according to the docket, a responsive pleading has not yet been served, and this is not a case in which a responsive pleading is not allowed. While the motion to amend (Docket No. 12) was filed after defendant filed its motion to dismiss (Docket No. 5), a motion to dismiss is not a responsive pleading for purposes of this Rule. See Robinson v. Dean Foods Co., 2009 WL 723329 (D. Colo. March 18, 2009).

Date: April 14, 2009
