

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02273-MSK-KLM

TAMMY HENDERSON,
WILLIAM BOMAR, and
TRAVIS RODE,

Plaintiffs,

v.

HARTFORD LIFE & ACCIDENT INSURANCE COMPANY

Defendant.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on **Plaintiffs' Motion to Amend Complaint to Add a Claim for Exemplary Damages Pursuant to C.R.S. § 13-21-102 and Fed. R. Civ. P. 16(b)(3)(A)** [Docket No. 31; Filed June 14, 2010] (the "Motion"). Pursuant to the Motion, Plaintiffs indicate that Defendant opposes the amendment. On July 6, 2010, Defendant filed a brief Response explaining that while it disputes whether Plaintiffs "have established a triable issue in support of a finding of exemplary damages," it recognizes that the liberal standard for pleading amendment likely justifies amendment at this stage. *Response* [#36] at 2. Rather than object to amendment here, Defendant intends to address the issue via dispositive motion. *See id.* Given that Defendant's position appears to be centered on the weight of the evidence, rather than whether, taking the evidence as true, it establishes a *prima facie* claim for exemplary damages, I view the Motion to be unopposed.¹

¹ Indeed, at this stage of the litigation, the Court is concerned with only whether the evidence, when viewed in the light most favorable to Plaintiffs, is sufficient to make out a *prima facie* case of willful

Accordingly, in light of the liberal amendment requirements of Fed. R. Civ. P. 15(a), see *E&S Liquors*, 2009 WL 837656, at *2-3,

IT IS HEREBY **ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER **ORDERED** that the Court accepts Plaintiffs' Amended Complaint and Jury Demand Adding Claim for Exemplary Damages [Docket No. 31-3] for filing as of the date of this Order.

IT IS FURTHER **ORDERED** that Defendant shall answer or otherwise respond to Plaintiffs' Amended Complaint on or before **August 6, 2010**.

Dated: July 12, 2010

BY THE COURT:

s/ Kristen L. Mix

KRISTEN L. MIX
United States Magistrate Judge

and wanton behavior for the purpose of adding a claim for exemplary damages, and not whether such evidence is sufficient to defeat summary judgment. See *E&S Liquors, Inc. v. U.S. Fidelity & Guar. Co.*, No. 08-cv-01694-WYD-KLM, 2009 WL 837656, at *2 (D. Colo. March 26, 2009) (unpublished decision).