

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00204-MSK-KLM

ANGEL C. ESQUIVEL, and
ANITA ESQUIVEL,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on **Plaintiffs' Unopposed Motion for Leave to File Amended Complaint** [Docket No. 45; Filed June 3, 2010] (the "Motion").

Fed. R. Civ. P. 15(a) provides for liberal amendment of pleadings. Leave to amend is discretionary with the court. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Viernow v. Euripides Dev. Corp.*, 157 F.3d 785, 799 (10th Cir. 1998). "If the underlying facts or circumstances relied upon by a [party] may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182. "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993). The nonmoving party has the burden of showing that the proposed amendment is sought in bad faith, causes undue delay, substantial prejudice, or that the amendment would be futile. *Corporate Stock Transfer, Inc. v. AE Biofuels, Inc.*, 663

F.Supp. 2d 1056, 1061 (D. Colo. 2009).

Defendant does not object to Plaintiffs' request to file an amended complaint. Moreover, the Court sees no basis for denying the Motion. There is no evidence of undue delay, prejudice to Defendant, or that the amendment would be futile. Therefore, Plaintiffs should be permitted to amend the Complaint.

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

IT IS FURTHER **ORDERED** that the Clerk of the Court accept for filing Plaintiffs' Amended Complaint [Docket No. 45-2]. Defendant shall answer or otherwise respond to the Complaint on or before **June 28, 2010**.

Dated: June 7, 2010

BY THE COURT:

s/ Kristen L. Mix
U.S. Magistrate Judge
Kristen L. Mix