

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 10-cv-00604-DME

MICHAEL WAYNE BINGHAM,

Plaintiff,

v.

ARSTEDES ZAVARAS, Exec. Dir. CDOC,
WARDEN TIMME, FCF,
LT. KOICHEVER,
LT. DIRECTO,
SGT. MARTIN,
SGT. STOGHILL,
JIM MOORE,
WARDEN MILYARD,
C/O CLINTON AULTMAN, and
JANEEN LANE, LPC,

Defendants.

ORDER GRANTING PLAINTIFF LEAVE TO AMEND THE COMPLAINT

On July 14, 2010, Plaintiff moved for leave to amend the Second Amended Complaint by adding an additional claim of retaliation and four additional defendants based on the putative defendants' alleged refusal to allow Plaintiff to partake in "Messianic [sic] Passover." (Doc. No. 50.) Pursuant to Rule 15(a), "[t]he court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a).

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Foman v. Davis, 371 U.S. 178, 182 (1962). The Court finds that allowing amendment of the Complaint will not, at this stage, cause undue delay or prejudice to the parties, as they have not yet even filed their answers to the Complaint. Accordingly, Plaintiff should have leave to amend his Complaint. Plaintiff's motion appears to request that this claim and these defendants merely be added to the Second Amended Complaint, but the Court declines to do so. Instead, Plaintiff must file an amended complaint to include this new claim.

Therefore, Plaintiff's Motion for Leave to File an Additional Complaint of Retaliation [Doc. No. 50] is GRANTED. Plaintiff has twenty-one (21) days in which to file a Third Amended Complaint to add the additional claim of retaliation mentioned in his motion. In drafting his Third Amended Complaint, Plaintiff is advised that the Court will not entertain any additional claims not contained in the Second Amended Complaint other than the single retaliation claim mentioned in his Motion for Leave to Amend, nor can Plaintiff add any additional defendants other than those mentioned in his motion. The Clerk of the Court is directed to mail two copies of the Court-approved form used to file a prisoner complaint.

Dated this 25th day of August, 2010.

BY THE COURT:

s/ David M. Ebel

U. S. CIRCUIT COURT JUDGE