

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00780-MSK-MJW

VON J. PHATHONG, and
JENNIFER D. PHATHONG,

Plaintiff(s),

v.

TESCO CORPORATION (US),

Defendant(s).

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

Rule 15(a) of the Federal Rules of Civil Procedure provides that “[t]he court should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “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) (citations omitted).

It is hereby ORDERED that Plaintiffs’ Motion for Leave to Amend Complaint, (docket no. 38) is GRANTED for the reasons stated in the subject motion (docket no. 38) and in the interest of justice as outlined in Fed. R. Civ. P. 15(a)(2). The First Amended Complaint and Jury Demand (docket no. 38-5) is accepted for filing as of the date of this minute order. As to Defendant’s futility argument, Judge Ebel has previously addressed that issue in the case of General Steel Domestic Sales, LLC v. Steel Wise, LLC, 2008 WL 2520423 (D. Colo. 2008). In the General Steel case, Judge Ebel stated, *in pertinent part*: “... Defendants’ futility argument seems to place the cart before the horse. Rather than force a Rule 12(b)(6) motion into a Rule 15(a) opposition brief, the defendants may be better served by waiting to assert Rule 12 motions until the operative complaint is in place.” Moreover, Plaintiff has produced evidence to add exemplary damages to the Complaint. See, *in particular*, Plaintiff’s reply (docket no. 41) and the attachments thereto.

Date: December 10, 2010
