

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01259-MSK-MJW

ROBERT LOWMAN,
ANDRE LOWMAN, and
SERIONOL LOWMAN,

Plaintiff(s),

v.

CITY OF AURORA,

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 Plaintiff’s Motion for Leave to Amend the Complaint to Add a Personal Representative of ‘Sandra Lowman’s Estate as a Plaintiff and to Add a Definitive claim of Loss of Familial Association and to Amend the Caption to Reflect Same (docket no. 43) is GRANTED for the reasons stated in the subject motion and in the interest of justice as outlined in Fed. R. Civ. P. 15(a)(2). The Amended Complaint (docket no. 43-1) 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.”

Date: January 5, 2011
