

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 10-cv-02277-CMA-KMT

STEVEN JOSHUA KARP,

Plaintiff,

v.

KIRK G. GARRETT, Correctional Officer, Colorado Department of Corrections, and  
WARDEN (Name Unknown), Denver Diagnostic Reception Center,

Defendants.

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**ORDER**

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This matter is before the court on Plaintiff's "Renewed and Amended Motion for Leave to Amend Original Complaint to Include Plaintiff's Declaration and, Documentary Exhibits" (Doc. No. 21, filed December 28, 2010).

Plaintiff wishes to amend his Complaint (Doc. No. 5) to add exhibits "to show that Defendants were CDOC correctional staff at all times relevant to the underlying cause of action." (Doc. No. 21 at 3.) Plaintiff also wishes to add a Declaration to give "a detailed account of what events occurred leading up to the assault . . . ." (*Id.*)

Pursuant to Fed. R. Civ. P. 15(a), "[t]he court should freely give leave (to amend the pleadings) when justice so requires." *See also York v. Cherry Creek Sch. Dist. No. 5*, 232 F.R.D. 648, 649 (D. Colo. 2005); *Aspen Orthopaedics & Sports Medicine, LLC v. Aspen Valley*

*Hosp. Dist.*, 353 F.3d 832, 842 (10th Cir. 2003). The Supreme Court has explained the circumstances under which denial of leave to amend is appropriate.

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.” Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

*Foman v. Davis*, 371 U.S. 178, 182 (1962). See also *Triplett v. LeFlore County, Okl.*, 712 F.2d 444, 446 (10th Cir. 1983).

As no defendant has been served in this matter, no scheduling conference has taken place. Thus, the case is still in the early stages of litigation. The court finds no undue delay, bad faith or dilatory motive, undue prejudice, or futility. As such, it is

**ORDERED** that Plaintiff’s “Renewed and Amended Motion for Leave to Amend Original Complaint to Include Plaintiff’s Declaration and, Documentary Exhibits” (Doc. No. 21) is GRANTED. The Clerk of Court shall file Plaintiff’s “Amended Prisoner Complaint” (Doc. No. 21-1).

The court will issue a separate order granting service by the United States Marshal Service on the named defendants.

Dated this 18th day of January, 2011.

**BY THE COURT:**



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Kathleen M. Tafoya  
United States Magistrate Judge