

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00679-PAB-KLM

TRACY CANTRELL,

Plaintiff,

v.

CHRIS GDOWSKI,
SHIRLEY BECKER,
KRISTY RICCIO, and
ADAMS 12 FIVE STAR SCHOOLS,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Unopposed Motion for Leave to File Amended Complaint** [Docket No. 12; Filed June 25, 2013] (the "Motion"). Pursuant to 28 U.S.C. § 636(b)(1)(A) and D.C.COLO.LCivR 72.1C.3., the Motion has been referred to this Court for disposition [#13].

As an initial matter, the Court notes that the Scheduling Conference is scheduled on July 1, 2013, and, therefore, no Scheduling Order has been entered in this case. As a result, the Motion is timely filed. In addition, the unopposed amendment seeks to add tort claims. It does not seek to add or subtract parties or dismiss any claims asserted in the original Complaint.¹

Pursuant to Fed. R. Civ. P. 15(a)(2), "a party may amend its pleading only with the

¹ A magistrate judge may issue orders on nondispositive motions only. *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1461, 1462-63 (10th Cir. 1988). Whether motions to amend are dispositive is an unsettled issue. *Chavez v. Hatterman*, No. 06-02525-WYD-MEH, 2009 WL 82496, at *1 (D. Colo. Jan. 13, 2009) (collecting cases). When an order on a motion to amend removes or precludes a defense or claim from the case it may be dispositive. *Cuenga v. Univ. of Kan.*, 205 F. Supp. 2d 1226, 1228 (D. Kan. 2002). Here, the amendment does not seek to remove or preclude a claim or defense. Therefore, the issue presented to the Court is not dispositive and the undersigned may issue an order on the Motion.

opposing party's written consent or the court's leave." The Court has discretion to grant a party leave to amend her pleadings. *Foman v. Davis*, 371 U.S. 178, 182 (1962); see Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."). "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 the amendment, etc. – the leave sought should, as the rules require, be 'freely given.'" *Id.* (quoting Fed. R. Civ. P. 15(a)(2)). Here, the Motion is unopposed and was not filed in bad faith nor is amendment futile. Accordingly,

IT IS HEREBY ORDERED that the Motion [#12] is **GRANTED**.

IT IS FURTHER ORDERED that the Amended Complaint [#12-1] be accepted for filing as of the date of this Order.

Dated: June 27, 2013