

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

Civil Action No. 15-cv-00793-CMA-KMT

MATTHEW R. OSBORNE,

Plaintiff,

v.

USAA FEDERAL SAVINGS BANK, and
EQUIFAX INFORMATION SERVICES, LLC,

Defendants.

ORDER

This matter is before the court on “Plaintiff’s Motion to Amend Complaint” (Doc. No. 23, filed August 7, 2015).

Plaintiff moves to amend his complaint to add additional allegations concerning Defendant USAA’s alleged failure to mark his credit account as disputed when responding to credit reporting agencies during the investigation into the theft of Plaintiff’s identity. (*See Mot.*)

Pursuant to Fed. R. Civ. P 15(a), the court is to freely allow amendment of the pleadings “when justice so requires.” The grant or denial of an opportunity to amend is within the discretion of the 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).

“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). The Tenth Circuit has concluded that the timeliness of the amendment and the prejudice to a defendant are to be the crux of the inquiry. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006).

Defendants did not file responses in opposition to the filing of the Amended Complaint. There has been no showing of, and the court does not find, undue delay, bad faith or dilatory motive, undue prejudice, or futility.

Therefore, it is

ORDERED that “Plaintiff’s Motion to Amend Complaint” (Doc. No. 23) is **GRANTED**.

The Clerk is directed to file Plaintiff’s First Amended Complaint (Doc. No. 23-2).

Dated this 11th day of September, 2015.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge