

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Discrimination

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
Human Rights,

Court File No. 27-CV-19-3629

Plaintiff,

AMENDED COMPLAINT

vs.

CSL Plasma, Inc.,

Defendant.

INTRODUCTION

This State of Minnesota, by Rebecca Lucero, Commissioner, Department of Human Rights, alleges that:

JURISDICTION AND VENUE

1. This Complaint is issued pursuant to Minn. Stat. § 363A.33, subd. 1 (2018).
2. The District Court Judge has jurisdiction over this matter pursuant to Minn. Stat. § 363A.33, subd. 6 (2018).
3. Venue is proper in Hennepin County pursuant to Minn. Stat. § 363A.33, subd. 6 because unlawful discriminatory practices discussed herein occurred in Hennepin County.

PARTIES

4. Complainant is the State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“MDHR”). The Commissioner is authorized pursuant

to Minn. Stat. § 363A.33 to bring a civil action in Minnesota District Court to seek redress for an unfair discriminatory practice as defined by the Minnesota Human Rights Act.

5. Defendant CSL Plasma, Inc., which operates CSL Plasma locations at 106 West Superior Street, Duluth, MN 55802 and at 304 E. Lake St., Minneapolis, MN 55408, is registered as a foreign corporation under Minn. Stat. ch. 303. CSL Plasma's registered office address is located at 1010 Dale Street North, St. Paul, MN 55117.

6. CSL Plasma's Duluth and Minneapolis locations are places of public accommodation as defined by Minn. Stat. § 363A.03.

FACTUAL BACKGROUND

DEFENDANT

7. CSL Plasma runs plasma collection centers on behalf of its parent company and is regulated by the United States Food and Drug Administration ("FDA").

8. Around 2015, CSL Plasma compensated plasma donors approximately \$30 per donation.

9. Presently, CSL Plasma compensates regular plasma donors an average of \$40-\$50 per donation.

10. The FDA provided nonbinding guidance in 1992 suggesting that plasma collection companies screen out men and transgender persons who have had sex with other men once or more since 1977.

11. The 1992 guidance specified that transgender individuals may be at a higher risk not because of their transgender status, but because of risk factors the FDA identified at the time associated with being transgender. The guidance also explicitly stated that "The focus should be on behavior and not on stereotypes." The guidance suggested that collection agencies assess risk

factors by questioning individuals about specific behaviors—such as biologically male individuals having sex with other men—instead of refusing a donation from an individual based upon a stereotype.

12. The FDA provided guidance on who may donate plasma in the form of 21 C.F.R. § 640.63. 21 C.F.R. § 640.63 was revised as of May 23, 2016 by 80 F.R. 29905, May 22, 2015.

CHARGING PARTY

13. Alice James is a transgender woman.

14. James has never had sex with a man.

15. James began donating plasma at CSL Plasma’s Duluth location—usually two times per week—around March 2011. She did so without incident until June 28, 2015.

16. Although James identifies as female, CSL Plasma required her to identify as biologically male when she began donating plasma in 2011. In June 2015 she returned to self-identifying as a female.

17. On June 28, 2015, James was locked out of the CSL Plasma kiosk check in. She was informed by a CSL Plasma employee that CSL Plasma was indefinitely deferring transgender persons from donating plasma.

18. In December 2015 the FDA updated its guidance on donor suitability. In particular, it recommended allowing persons to self-report gender and screening out only men who have had sex with other men once or more in the past year.

19. On February 2, 2016, James filed a charge of discrimination with MDHR alleging that CSL Plasma discriminated against her based on her sexual orientation both in the context of business discrimination and public accommodation discrimination.

20. CSL Plasma, in its response to the charge of discrimination, acknowledged that it had a “flat ban on all transgender donors” despite the FDA guidance.

21. CSL Plasma claimed that, on March 23, 2016 it revised its policies to allow donors to self-identify their gender and accept donations from transgender persons who have not had sex with a man or engaged in other behaviors that it identifies as risk factors.

22. James moved to Minneapolis in October 2016 and currently resides there.

23. In October 2018 James went to CSL Plasma’s Minneapolis location and was informed by a CSL Plasma employee that she continued to be permanently deferred and that should try to donate plasma at a vendor other than CSL.

24. Between June 25, 2016 and the present, James was deprived of at least \$60 per week of income based on CSL Plasma’s refusal to allow her to donate plasma.

25. James suffered emotional distress because of CSL Plasma’s actions.

26. MDHR staff conducted an investigation of James’ charge.

27. On November 8, 2017, the Commissioner determined that probable cause existed to believe that discrimination had occurred.

28. CSL Plasma declined to participate in conciliation services offered by MDHR.

NEW ALLEGATIONS OF DISCRIMINATION

29. Charlie Edgar is a Hennepin County resident.

30. Edgar identifies as “genderqueer” and is a person of non-binary gender identity, and their sex identification marker on their State of Minnesota-issued photo identification is “X.”

31. Edgar has never had sex with a man.

32. In September 2019, Edgar attempted to donate plasma at Defendant's Minneapolis location. Edgar provided Defendant's employee with their photo identification, Social Security Card, and utility bill.

33. Defendant's employee told Edgar that she did not know how to handle Edgar's non-binary gender identifier on Edgar's photo identification.

34. Edgar explained to Defendant's employee that their assigned sex at birth was female and they now are non-binary. Edgar answered all questions that Defendant requires either a male or female to answer for plasma donor screening purposes. Edgar satisfied the health screening questions posed, as Edgar has never had sex with a man. Edgar also offered to return to Defendant's Minneapolis location with their birth certificate.

35. Defendant's employee left and returned with a manager, who told Edgar that they could not "self-identify" their gender and that Edgar could not identify as a "female" according to their birth certificate. Defendant's manager told Edgar that Edgar would be contacted by Defendant's manager the following day with more information.

36. The next day, Edgar spoke with Defendant's manager who told Edgar that she had emailed her own regional director and that the regional director had contacted his own supervisor. Defendant's manager told Edgar that Defendant would not allow Edgar to donate plasma because of Edgar's gender identity.

37. In October 2019, Charlie Edgar, through counsel, contacted MDHR to relay these allegations.

38. Defendant's actions, as reported to MDHR, directly contradict Defendant's assertion that it changed its practices to conform to the donor suitability guidelines issued by the FDA.

COUNT I

PUBLIC ACCOMMODATION DISCRIMINATION (MINN. STAT. § 363A.11)

39. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

40. The Minnesota Human Rights Act (“MHRA”) defines sexual orientation, in part, as “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” Minn. Stat. § 363A.03, subd. 44.

41. The charging party, as a transgender person who was born biologically male but identifies as female, is protected from discrimination based on her sexual orientation, as defined by the MHRA.

42. The MHRA defines a place of public accommodation as “a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.” Minn. Stat. § 363A.03, subd. 34.

43. CSL Plasma opens its doors to all members of the public for the purpose of entering its premises to determine whether an individual is suitable for plasma donation or should be denied because of certain risk factors.

44. CSL Plasma does not limit the number of individuals with whom it can enter into a plasma-donor relationship.

45. CSL Plasma is a public accommodation covered by the requirements of the MHRA, Minn. Stat. § 363A.11.

46. CSL Plasma refused to allow James to donate plasma because she is transgender between June 28, 2015 and the present.

47. CSL Plasma refused to allow a class of similarly situated persons to donate plasma between June 28, 2014 and the present.

48. CSL Plasma discriminated against James in a place of public accommodation on the basis of her sexual orientation.

49. CSL Plasma discriminated against the class of similarly situated persons in a place of public accommodation on the basis of class member sexual orientation, as defined in Minn. Stat. § 363A.03, subd. 44.

50. As a result of CSL Plasma's actions, James suffered the harm described in this Complaint.

51. As a result of CSL Plasma's actions, the class of similarly situated persons were deprived of income that they would have otherwise received for plasma-donation, but for CLS Plasma's unlawful discrimination.

COUNT II

BUSINESS DISCRIMINATION (MINN. STAT. § 363A.17)

52. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

53. It is an unfair discriminatory practice for a person engaged in business or in the provision of a service to intentionally refuse to do business with, or to refuse to contract with, a person because of that person's sexual orientation unless the alleged refusal or discrimination is because of a legitimate business purpose.

54. CSL Plasma does business with plasma donors within the meaning of the MHRA because it pays donors for their time spent in the donation process and receives plasma in exchange.

55. CSL Plasma explicitly refused to do business with James because of her sexual orientation between June 28, 2015 and the present. This deprived her of a regular source of income.

56. Between June 28, 2015 and the present federal regulations did not forbid transgender persons from donating plasma but did single out at-risk behaviors.

57. CSL Plasma did not identify any behaviors James engaged in which would constitute a legitimate business purpose for refusing to do business with her.

58. CSL Plasma discriminated against James in the business context on the basis of her sexual orientation.

59. CSL Plasma discriminated against a class of similarly situated persons in the business context on the basis of sexual orientation, as defined by Minn. Stat. § 363A.03, subd. 44.

60. As a result of CSL Plasma's actions, James suffered the harm described in this Complaint.

61. As a result of CSL Plasma's actions, the class of similarly situated persons were deprived of income that they would have otherwise received for plasma-donation, but for CLS Plasma's unlawful discrimination.

RELIEF

The District Court has the authority to issue any relief authorized by Minn. Stat. § 363A.33. The Commissioner, therefore, prays that the Court issues its findings of fact and conclusions of law and grant the following relief:

1. Enter an order, pursuant to Minn. Stat. § 363A.29, subd. 3, finding that CSL Plasma violated Minn. Stat. § 363A.11 and .17 and directing CSL Plasma to cease and desist from violating Minn. Stat. § 363A.11 and .17.
2. Enter an order requiring CSL Plasma to compensate James in an amount up to three times the actual damages sustained as well as damages for mental anguish and suffering, pursuant to Minn. Stat. § 363A.29, subd. 4.
3. Enter an order requiring CSL Plasma to notify individuals previously deferred from donating plasma pursuant to CSL Plasma's discriminatory practice that they were deferred from donating plasma in violation of the Minnesota Human Rights Act and that they are no longer deferred from donating plasma at CSL Plasma locations so long as they otherwise satisfy the 2015 FDA Guidance.
4. Enter an order requiring CSL Plasma to compensate individuals affected by its discriminatory practice for actual damages in order to effectuate the purposes of this chapter and to cure CSL Plasma's past discriminatory practice, pursuant to Minn. Stat. § 363A.29, subds. 3-4.
5. Enter an order requiring CSL Plasma to pay a civil penalty to the State, pursuant to Minn. Stat. § 363A.29, subd. 4.

6. Enter an order requiring CSL Plasma employees to undergo training on gender identity discrimination that is approved by the Department, pursuant to Minn. Stat. § 363A.29, subd. 3.
7. Enter an order pursuant to Minn. Stat. § 363A.29, subd. 3 requiring CSL Plasma to submit reports at least quarterly regarding its deferral at its Minnesota locations of plasma donors whose have or are perceived to have a gender identity not traditionally associated with one's assigned sex at birth.
8. Enter an order requiring CSL Plasma reimburse the Commissioner and the Minnesota Attorney General's Office for all appropriate investigation, litigation, and hearing costs expended in preparing for and conducting the hearing pursuant to Minn. Stat. § 363A.33, subd. 7.

Dated: November 7, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Jonathan D. Moler

JONATHAN D. MOLER
Assistant Attorney General
Atty. Reg. No. 0396621

445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2127
(651) 757-1330 (Voice)
(651) 297-4139 (Fax)
jonathan.moler@ag.state.mn.us

ATTORNEY FOR COMMISSIONER
REBECCA LUCERO, MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2018).

Dated: November 7, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Jonathan D. Moler

JONATHAN D. MOLER
Assistant Attorney General
Atty. Reg. No. 0396621

445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2127
(651) 757-1330 (Voice)
(651) 297-4139 (Fax)
jonathan.moler@ag.state.mn.us

ATTORNEY FOR COMMISSIONER
REBECCA LUCERO, MINNESOTA
DEPARTMENT OF HUMAN RIGHTS