

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Discrimination

Court File No. 27-CV-19-3629

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

Plaintiff,

vs.

CSL Plasma, Inc.,

Defendant.

**MEMORANDUM OF LAW
IN SUPPORT OF COMMISSIONER
LUCERO'S MOTION TO AMEND THE
COMPLAINT**

INTRODUCTION

Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“MDHR”) seeks to amend her Complaint against CSL Plasma, Inc. principally in order to add facts related to CSL Plasma’s practice of discriminating against individuals who have or who CSL Plasma perceives to have a self-image or identity not traditionally associated with one’s biological maleness or femaleness. This case is still in the initial discovery phase—CSL Plasma has not yet responded to MDHR’s initial discovery requests or ruled on plaintiff-intervenors motions to intervene. The factual amendments MDHR seeks in the Amended Complaint are largely encompassed by the facts laid out in Plaintiff-Intervenor’s Amended Complaint. As such, this amendment does not prejudice CSL Plasma, and the Court should permit MDHR to amend its Complaint under the Minnesota Rules of Civil Procedure’s liberal amendment standards.

BACKGROUND

On March 7, 2019, MDHR filed this discrimination complaint against CSL Plasma, Inc. Plaintiff-Intervenor Alice James filed a complaint in intervention on March 16, 2019. CSL Plasma objected to the Plaintiff-Intervenor James' intervention. CSL Plasma requested a scheduling conference, which occurred in the Court's chambers on May 8, 2019. The parties—including Plaintiff-Intervenor James—attempted to resolve the case through mediation in front of retired Judge Karen Klein on July 9, 2019, but the mediation was unsuccessful.

This Court issued a scheduling order for this case on September 10, 2019. On October 1, 2019 MDHR became aware that Plaintiff-Intervenor James had been approached, through counsel, by another gender non-conforming individual who had been deferred from donating plasma by CSL Plasma because of the individual's gender identity. Affidavit of Irina Vaynerman ("Vaynerman Aff.") ¶ 3. This information directly contradicts CSL Plasma's representations that it had ceased its practice of deferring gender non-conforming individuals simply because they are gender-nonconforming. The individual, Plaintiff-Intervenor Charlie Edgar, noticed intervened in this case on October 8, 2019. MDHR, through its Deputy Commissioner, met with and interviewed Plaintiff-Intervenor Edgar on October 14, 2019. Vaynerman Aff. ¶ 4. MDHR now moves to amend its Complaint to incorporate the new information that it learned from Plaintiff-Intervenor Edgar into the Complaint.

ARGUMENT

The Court should grant the MDHR's Motion to Amend. MDHR seeks to add allegations of CSL Plasma's discrimination against gender non-conforming individuals to its complaint. These allegations directly contradict CSL Plasma's representations to MDHR and in its Answer that it has ceased the practice of deferring plasma donors solely because of that individual's non-conforming gender identity. Based on this information, MDHR also seeks to refine the relief it

seeks from this Court pursuant to section 363A.29 of the Minnesota Human Rights Act (“MHRA”). Because MDHR’s amendments do not prejudice CSL Plasma and the interests of justice require this amendment, the Court should grant MDHR’s motion under the permissive standard to amend.

I. THIS COURT HAS BROAD DISCRETION TO PERMIT MDHR TO AMEND ITS COMPLAINT, AND THE COURT’S LEAVE SHOULD BE “FREELY GIVEN.”

After a responsive pleading is served, a party may amend its original pleading with either written consent of the adverse party or by leave of court. Minn. R. Civ. P. 15.01. “[L]eave shall be freely given when justice so requires.” *Id.*

Trial courts have broad discretion to permit a party to amend the pleadings. *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 269 (Minn. 2016). The threshold for a motion to amend is low, and courts should allow the motion unless the defendant can establish prejudice—other than merely having to defend against additional claims. *See, e.g., Marlow Timberland, LLC v. Cty. of Lake*, 800 N.W.2d 637, 640 (Minn. 2011); *Crum v. Anchor Cas. Co.*, 264 Minn. 378, 119 N.W.2d 703 (1963); *Nelson v. Glenwood Hills Hospitals*, 240 Minn. 505, 62 N.W.2d 73 (1953). The party objecting to the amendment bears the burden of showing prejudice. *McDonald v. Stonebaker*, 255 N.W.2d 827, 830 (Minn. 1977); *Gunnufson v. Onan Corp.*, 450 N.W.2d 179, 181 (Minn. Ct. App. 1990). The rule favors the “liberal right” to amend pleadings to encourage resolution of disputes on the merits rather than on the formalities of the pleadings. David F. Herr and Roger S. Haydock, *Minnesota Practice Series, Civil Rules Annotated*, R. 15.01 (6th ed., 2018).

II. MDHR SHOULD BE PERMITTED TO ADD ALLEGATIONS REGARDING CSL PLASMA'S CONTINUING DISCRIMINATORY PRACTICES.

MDHR's proposed Amended Complaint adds allegations regarding CSL Plasma's continuing discriminatory treatment of gender non-conforming individuals and directly contradicts CSL Plasma's representation that it "did not ban all transgender donors in 2015 or today." Answer, ¶ 20. The Amended Complaint demonstrates that CSL Plasma's violations of the MHRA extend beyond its previously alleged conduct related to Alice James. Because MDHR has now confirmed that gender non-conforming individuals were affected by CSL Plasma's discriminatory practice, MDHR has also adjusted the relief it requests to reflect that fact.

These amendments do not prejudice CSL Plasma. The facts alleged in the Amended Complaint are substantively identical to the allegations in Plaintiff-Intervenor Edgar's complaint in intervention and MDHR's motion to amend can be heard at the same time as the hearing on James and Edgar's motion in intervention. Moreover, Defendant has faced similar discrimination claims by gender non-conforming individuals in other venues, particularly in *Kaiser v. CSL Plasma, Inc.*, C15-0842 (W.D. Wash.) and *Scott v. CSL Plasma, Inc.*, No. 14-2616 (D. Minn.). As such, there is nothing surprising or prejudicial about the MDHR's proposed amendments. *See Marlow Timberland*, 800 N.W.2d at 640 (stating motion to amend should be granted absent prejudice).

The Court should have the full facts concerning CSL Plasma's practice of deferring gender non-conforming individuals in Minnesota, as doing so will promote judicial economy by permitting the Court to hear the full breadth of CSL Plasma's conduct in one action. *See* David F. Herr and Roger S. Haydock, *Minnesota Practice Series, Civil Rules Annotated*, R. 15.01 (6th ed., 2018) (noting "liberal right" to amend pleadings to encourage resolution of disputes on the

merits rather than on the formalities of the pleading); *Fedie v. Mid-Century Ins. Co.*, 631 N.W.2d 815, 822 (Minn. Ct. App. 2001) (“[T]he rule gives no time limit for bringing a motion to amend pleadings.”).

CSL Plasma cannot be prejudiced by MDHR’s amendments, and the Court should grant this motion.

CONCLUSION

For all of the above reasons, MDHR respectfully requests that this Court grant MDHR’s Motion to Amend the Complaint.

Dated: November 7, 2019

Respectfully submitted,

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/s/ Jonathan D. Moler

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**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through the undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: November 7, 2019

Respectfully submitted,

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