

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar,

Plaintiff,

Court File No. 16-cv-100 (DWF/LIB)

v.

ORDER

Essentia Health, et al.,

Defendants.

This matter came before the undersigned United States Magistrate Judge pursuant to a general referral made in accordance with the provisions of 28 U.S.C. § 636(b)(1)(B), and upon Plaintiff's Motion to Amend the Complaint, [Docket No. 52]. A hearing on the Motion was held on November 7, 2017, after which the Motion to Amend was taken under advisement. ([Docket No. 59]).

For the reasons set forth below, the Court **GRANTS** Plaintiff's Motion for Leave to Amend the Complaint, [Docket No. 52].

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The following facts are taken from the Eighth Circuit's opinion in Tovar v. Essentia Health, 857 F.3d 771, 773-74 (8th Cir. 2017). Additional facts are related in the analysis section below as needed for determination of the arguments on the present Motion to Amend.

Brittany Tovar is a nurse practitioner who was employed by Essentia [Health or defendant Innovis Health, LLC, dba Essential Health West (collectively, Essentia)] from 2010 to 2016. Tovar's benefits as an employee of Essentia included health insurance provided through the Essentia Health Employee Medical Plan (the plan). The plan corresponded to an insurance policy offered to employers by HealthPartners, Inc. and was administered either by HealthPartners, Inc. or by its subsidiary HealthPartners Administrators, Inc. (HPAI).

In 2014 Tovar's teenage son became a beneficiary of the plan. Later that year Tovar's son was diagnosed with gender dysphoria, a condition that arises when an individual's gender identity differs from the gender assigned at birth. Health professionals decided that various treatments were necessary to treat her son's condition, including medications and gender reassignment surgery. Tovar sought coverage under the plan, but because the plan at that time categorically excluded coverage of "[s]ervices and/or surgery for gender reassignment," the defendants declined to pay for her son's treatment. The coverage dispute caused Tovar "worry, anger, disappointment, and sleepless nights," made it "more difficult for her to focus on her work," and led her to suffer "a sharp increase in migraines." Tovar also paid herself for at least one of her son's prescribed medications although Essentia "later agreed to provide Tovar with coverage for [that medication] as a one-time exception" to its categorical bar on coverage. Tovar's son was forced to forgo another prescribed medication that the family was unable to pay for and was unable to go forward with gender reassignment surgery.

Tovar filed this lawsuit in January 2016. Her complaint charged Essentia with sex discrimination in violation of Title VII [of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.,] and the [Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A.01 et seq.] and charged HealthPartners, Inc. with discrimination in violation of the [Affordable Care Act (ACA), 42 U.S.C. § 18116]. The defendants moved to dismiss the complaint [under Federal Rule of Civil Procedure 12(b)(6)]. The district court granted the defendants' motions, concluding that Tovar's claims against Essentia failed for lack of statutory standing and that her claim against HealthPartners, Inc. failed for lack of Article III standing.

857 F.3d at 773-74.

After United States District Court Judge Richard H. Kyle granted Defendants' Motions to Dismiss, Tovar filed a Motion to Alter or Amend the Judgment, [Docket No. 24]. She asked the Court to amend its Order to dismiss the count against HealthPartners, Inc. with prejudice; because the other two counts had been dismissed with prejudice, the requested amendment would more likely be considered a "final" judgment, which would allow Tovar to appeal the judgment to the Eighth Circuit. (Mem. in Supp., [Docket No. 26]). In response, HealthPartners, Inc. asked the Court to add HealthPartners Administrators, Inc. as a defendant and only then amend the dismissal to one with prejudice, in order to prevent HealthPartners, Inc. from having to litigate "on two fronts: on appeal in this case, and in a separate action against HealthPartners

Administrators, Inc. (“HPAI”), the ‘correct’ party in Count III.” (Order, [Docket No. 32], 1). On June 23, 2016, Judge Kyle vacated his prior Judgment, ordered the amendment of Tovar’s Complaint to add HPAI as a Defendant, and dismissed all of the claims in the Amended Complaint with prejudice. (Id. at 2).

Tovar appealed to the Eighth Circuit. ([Docket No. 36]). On July 6, 2017, the Eighth Circuit issued its opinion in Tovar’s appeal. With regards to the dismissal of Tovar’s Title VII and MHRA claims for lack of “statutory standing,” which the Eighth Circuit explained required that “a plaintiff who seeks relief for violation of a statute must ‘fall [] within the class of plaintiffs whom Congress has authorized to sue’ under that statute,” the Eighth Circuit stated:

[T]he statute[s] prohibit[] employers from discriminating against employees on the basis of their protected characteristics. Tovar has not alleged that she was discriminated against on the basis of her own sex; rather, she alleges that she was discriminated against because of her son’s sex. By [their] terms, the protections of Title VII [and the MHRA] do not extend to such discrimination.

Tovar, 857 F.3d at 774-76. Moreover, the case law Tovar cited in support of her position “provide[d] little support . . . because there is no plausible argument that Essentia’s failure to cover gender reassignment treatment for Tovar’s son amounted to discrimination against Tovar on the basis of her own sex.” Id. at 776. Thus, the Eighth Circuit affirmed the dismissal of Tovar’s MHRA and Title VII claims against Essentia. Id. at 777.

Turning to Tovar’s appeal of the dismissal of her claim against HealthPartners, Inc. and HPAI for lack of Article III standing, the Eighth Circuit explained:

The requirements of Article III standing are well settled: a plaintiff must show “(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision.” In this case, the district court concluded that Article III standing was lacking because Tovar had failed to show that the injuries of which she complained were traceable to or redressable by HealthPartners, Inc. and HPAI.

Id. at 777 (citation omitted). More specifically:

The primary reason the district court concluded that Tovar lacked Article III standing for her ACA claim was its determination that Tovar had sued the wrong defendant in her third count. The district court concluded that HealthPartners, Inc. had neither caused Tovar’s alleged injuries nor could redress them.

Id. The Eighth Circuit disagreed with this conclusion, holding that “the . . . determination that HealthPartners, Inc. was improperly named as a defendant was in error It thus appears that, at this stage in the litigation, both HealthPartners, Inc. and HPAI are properly named as defendants.” Id. at 777-78.

In addition, however, Judge Kyle had held in the alternative that Tovar’s claims against HealthPartners, Inc. would also fail for lack of Article III standing because Tovar’s alleged injury was neither traceable to nor redressable by HealthPartners, Inc. because the plan was self-funded by Essentia—which meant that Essentia and not the plan administrator paid claims—and the plan document reserved to Essentia “all powers and discretion necessary to administer the Plan.” Id. at 778. The Eighth Circuit disagreed with this conclusion as well, holding that in the context of a Rule 12(b)(6) analysis, the allegation in Tovar’s complaint that:

[The allegation in Tovar’s Complaint that] the plan “corresponds to an insurance policy offered to employers by HealthPartners . . .” . . . suggests that the plan and its allegedly discriminatory terms originated with HealthPartners, Inc. and/or HPAI—not with Essentia. If HealthPartners, Inc. or HPAI provided Essentia with a discriminatory plan document, Tovar’s alleged injuries could well be traceable to and redressable through damages by those defendants notwithstanding the fact that Essentia subsequently adopted the plan and maintained control over its terms.

Id. The Eighth Circuit also concluded that Tovar had sufficiently alleged that she “suffered a concrete and particularized injury in fact . . . sufficient to confer Article III standing . . . because she contends that the defendants’ discriminatory conduct denied her the benefits of her insurance policy and forced her to pay out of pocket for some of her son’s prescribed medication.” Id.

Finally, the Eighth Circuit declined to consider Defendants’ argument, made for the first time on appeal that Tovar’s ACA claim should be dismissed because (1) “Tovar does not ‘fall[] within the class of plaintiffs whom Congress has authorized to sue under’ the ACA, and [(2)] HealthPartners, Inc. and HPAI cannot be liable under that statute for administering a plan whose allegedly discriminatory terms were under the sole control of another organization.” *Id.* at 779 (citations omitted). Rather, the Eighth Circuit stated:

As we have often noted, “[w]hen it would be beneficial for the district court to consider an alternative argument in the first instance, we may remand the matter to the district court.” We conclude that such is the situation here, and we therefore remand for the district court to determine in the first instance whether Tovar’s claim against HealthPartners, Inc. and HPAI should be dismissed for failure to state a claim under the ACA.

Id. (citations omitted). Accordingly, the Eighth Circuit affirmed Judge Kyle’s Order in part and reversed in in part, remanding for “further proceedings consistent with this opinion.” *Id.* at 799.

On remand, this case was reassigned to United States District Judge Donovan W. Frank. ([Docket No. 46]). Judge Frank ordered the parties to submit letter briefs stating their positions on the current status of the case and how to proceed going forward. ([Docket No. 47]). The parties did so, and Judge Frank issued an order on September 29, 2017, directing Tovar to file a Motion to Amend her Complaint with the Magistrate Judge. ([Docket No. 51]).

On October 5, 2017, Tovar filed the present Motion to Amend her Complaint, [Docket No. 52]. Tovar asks to amend her Complaint to: (1) change the case caption to reflect HPAI as a defendant; (2) add facts; (3) add her son, Reid Olson, as a plaintiff in this case; and (4)¹ add

¹ Plaintiff does not explicitly articulate this fourth request—to add Essentia as a Defendant—but, by virtue of the Eighth Circuit affirming the dismissal of the only claim originally brought against Essentia, Essentia is no longer a party to this case. *See, Besett v. Hegg*, 890 F. Supp. 2d 1076, 1081 (D. Minn. 2012) (noting that the court had previously dismissed all of the claims against some defendants and entered judgment on claims against other defendants and characterizing the two remaining defendants as “[t]he only Defendants that presently remain in this suit”); *Waters v. Shinn*, 178 F. 345, 352 (W.D. Ark. 1907) (noting that the court had dismissed all claims against a defendant without prejudice and “[b]y this order [that individual] ceased to be a defendant in the suit”); *Briscoe v. St. Louis County*, No. 4:08-CV-1717 (CEJ), 2010 WL 3905339, *3 (E.D. Mo. Sept. 27, 2010) (noting that all claims

Essentia as a defendant in a claim brought by Olson. (Mem. in Supp., [Docket No. 55], 1-2). In the proposed Amended Complaint, Tovar and Olson assert one count of violation of the ACA by HealthPartners, Inc. and HPAI, and Olson alone asserts one count of violation of the ACA by Essentia. ([Docket No. 56-1], 13-14).

On October 12, 2017, HealthPartners, Inc. and HPAI filed a Memorandum in Response, stating that they do not oppose Tovar's Motion, but they are not waiving any defenses by their decision to not formally oppose the Motion.² (Mem., [Docket No. 57], 1-2). On October 12, 2017, Essentia Health filed its Memorandum in Opposition to the Motion, arguing that the Court should deny Tovar's Motion because of her "undue delay" in seeking the amendments and because the proposed amendments are futile. ([Docket No. 58], 1-2).

II. PLAINTIFFS' MOTION TO AMEND THE COMPLAINT, [Docket No. 52]

A. Standards of Review

"In order to amend a complaint to add additional parties after a responsive pleading has been filed, a movant must seek leave of the court pursuant to Rule 15 of the Federal Rules of Civil Procedure, and [s]he must demonstrate compliance with either Rule 19 or Rule 20, the procedural rules pertaining to joinder of parties." Ikeri v. Sallie Mae, Inc., No. 13-cv-1943 (DSD/JSM), 2014 WL 12599634, *8 (D. Minn. Feb. 5, 2014) (citations omitted).

Federal Rule of Civil Procedure 15(a) states, "The court should freely give leave [to amend a complaint] when justice so requires." Fed. R. Civ. P. 15(a)(2). However, "[t]he policy favoring liberal allowance of amendment does not mean that the right to amend is absolute." A motion to amend should be denied if the plaintiff is "guilty of undue delay, bad faith, dilatory motive, or if permission to amend would unduly prejudice the opposing party."

against St. Louis County had been previously dismissed under Rule 12(b)(6) for failure to state a claim upon which relief could be granted, so "St. Louis County is no longer a defendant in this action"). At the November 7, 2017, Motion Hearing, Tovar conceded on the record that as of this time, Essentia is not a party to the case presently before the Court. (Nov. 7, 2017, Motion Hearing, Digital Record, 1:44-45). Accordingly, if Olson's claim against Essentia as pled in the proposed Amended Complaint is to proceed, Essentia must be rejoined as a Defendant.

² HealthPartners and HPAI also reiterated on the record at the November 7, 2017, Motion Hearing that they do not oppose the present Motion to Amend the Complaint. (Nov. 7, 2017, Motion Hearing, Digital Record, 1:42-43).

Kozlov v. Associated Wholesale Grocers, Inc., 818 F.3d 380, 394-95 (8th Cir. 2016) (citations omitted). “In most cases, however, decisions on such matters are “left to the sound discretion of the district court.” Id. at 394 (citation omitted).

Similarly, whether to allow permissive joinder of additional parties is also a decision within the discretion of the Court. See, United States ex rel. Ambrosecchia v. Paddock Laboratories, LLC, 855 F.3d 949, 956 (8th Cir. 2017) (citing Mosley v. Gen. Motors Corp., 497 F.2d 1330, 1332 (8th Cir. 1974) (“reviewing the decision to allow parties to join litigation for abuse of discretion”). Federal Rule of Civil Procedure 20(a) governs permissive joinder of parties,³ and states:

- (1) **Plaintiffs.** Persons may join in one action as plaintiffs if:
 - (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B) any question of law or fact common to all plaintiffs will arise in the action.
- (2) **Defendants.** Persons . . . may be joined in one action as defendants if:
 - (A) any right to relief is asserted against them jointly severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B) any question of law or fact common to all defendants will arise in the action.

To decide whether to allow joinder of parties, the Court assesses whether claims are reasonably related on a case by case basis. See, Karasov v. Caplan Law Firm, P.A., 84 F. Supp. 3d 886, 915 (D. Minn. 2015). “When considering a motion to amend a complaint to add a new party, a court must still follow the ‘freely given’ guidance of Rule 15(a).” Mallak v. Aitkin County, No. 13-cv-2119 (DWF/LIB), 2015 WL 2250494, *7 (D. Minn. March 4, 2015) (citations omitted).

³ Mandatory joinder of additional parties, which Tovar does not argue is required here, is governed by Federal Rule of Civil Procedure 19.

Essentia argues for a stricter standard of review, asserting that “the Eighth Circuit Court of Appeals has expressly noted that ‘different considerations apply to motions filed after dismissal’ of a party or action. U.S. ex rel. Roop v. Hypoguard USA, Inc., 559 F.3d 818, 823 (8th Cir. 2009).” (Mem. in Opp., [Docket No. 58], 8). However, the holding in Roop does not require the same standard to be applied here. In Roop, the Eighth Circuit made the quoted statement in reference to a plaintiff who attempted to amend his complaint to cure Rule 9 particularity deficiencies which had led to the dismissal of his claim. See, 559 F.3d at 820-21. The plaintiff in Roop wished to amend the complaint to re-assert the very claim which had already been dismissed, which led to the concerns about finality of an order of dismissal if the claim dismissed was later amended. Id.

Essentia also cites Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC, 781 F.3d 1003, 1010 (8th Cir. 2015), but in that case the plaintiff also sought to amend the complaint to bring claims against a defendant when all of that plaintiff’s previous claims against that particular defendant had been dismissed with prejudice. See, 781 F.3d at 1009-10; (Mem. in Opp., [Docket No. 58], 8-9). Essentia also notes that the Eighth Circuit has stated that motions to amend a complaint post-judgment are “disfavored.” (Id. at 9 (citing Ash v. Anderson Merchandisers, LLC, 799 F.3d 957, 962 (8th Cir. 2015))). Again, however, Ash dealt with plaintiffs who were “on notice of the possible deficiencies in their original complaint” yet instead of moving to amend that complaint, “they chose to rest on their original complaint, and did not seek leave to amend until that complaint was found to be deficient” and was dismissed. Id. at 963-94. Therefore, as in Roop and Streambend Properties II, granting the post-judgment motion to amend in Ash would have allowed a plaintiff to resurrect a claim against a defendant after that claim was dismissed.

In the case presently before the Court, however, Tovar does not seek to amend her previously dismissed claim against Essentia. Rather, she seeks to join Olson as a Plaintiff so that he may bring his own, never-before-litigated claim against Essentia. Proposed Count II of the proposed Amended Complaint clearly states that “Essentia discriminated against Plaintiff Olson in violation of” the ACA and “Essentia’s violation [of the ACA] caused Olson economic harm and emotional distress.” ([Docket No. 56-1], 14). There is no mention of Tovar in the language of proposed Count II. (Id.). Because Olson has not been a plaintiff in the case and Tovar did not previously bring a claim on Olson’s behalf or as his representative, there has been no prior dismissal of any claim by Olson which would trigger the heightened scrutiny or disfavor of the present Motion to Amend, as was required in Roop, Streambend Properties II, and Ash.

This also undermines Essentia’s argument that “undue delay” alone is a sufficient reason to deny Tovar’s Motion to Amend. (See, Mem. in Opp., [Docket No. 58], 9-13). In support, Essentia quotes Ash, 799 F.3d at 962, in which the Eighth Circuit stated: “Unexcused delay is sufficient to justify the court’s denial [of a motion to amend] if the party is seeking to amend the pleadings after the district court has dismissed the claims it seeks to amend, particularly when the plaintiff was put on notice of the need to change the pleadings before the complaint was dismissed but failed to do so.” (See, Mem. in Opp., [Docket No. 58], 9-13). However, as explained above, Tovar is not seeking to amend her claim against Essentia; she is seeking to add Olson so that he may bring a claim against Essentia. Therefore, Tovar is not “seeking to amend the pleadings after the district court has dismissed the claims [she] seeks to amend,” (emphasis added), so unexcused delay alone, even assuming solely for the sake of argument that it exists here, is not sufficient to independently warrant denial of the portion of Tovar’s Motion that seeks permission for Olson to bring a claim against Essentia. Rather, as the Eighth Circuit recently

reiterated: “Delay alone, however, is an insufficient reason to deny a litigant’s motion to amend under Rule 15(a)(2).” Coulter v. Kelley, 871 F.3d 612, 619 (8th Cir. 2017) (citation omitted).

B. Analysis

1. Changing the Case Caption

First, Tovar moves to amend her Complaint to add HPAI to the case caption. (Mem. in Supp., [Docket No. 55], 1). As Tovar notes, HPAI was added as a Defendant by virtue of Judge Kyle’s June 23, 2016, Order. ([Docket No. 32]; Nov. 7, 2017, Motion Hearing, Digital Record, 1:45-46). With respect to the case caption, the present Motion to Amend the Complaint seeks only to change the case caption to accurately reflect this addition. Moreover, as the parties clarified at the November 7, 2017, Motion Hearing, the addition of HPAI to the case caption is not in dispute. (Nov. 7, 2017, Motion Hearing, Digital Record, 1:42-43, 1:45-46).

Therefore, the Court **grants** Tovar’s Motion to Amend, [Docket No. 52], to the extent that she seeks to correct the case caption and operative Complaint to properly reflect HPAI as a Defendant.

2. Additional Facts

Tovar also seeks to amend the Complaint to add facts which she alleges were newly discovered and/or help clarify allegations in the Complaint. (Mem. in Supp., [Docket No. 55], 1). At the November 7, 2017, Motion Hearing, Tovar clarified that the proposed additional facts serve two purposes: (1) to properly identify HealthPartners and HPAI’s roles in the circumstances underlying this case, and (2) provide detail and further clarify the existing claim against HealthPartners and HPAI, and they do not include any separate and independent facts

alleged only in support of the proposed additional claim by Olson against Essentia.⁴ (Nov. 7, 2017, Motion Hearing, Digital Record, 1:46-50). To the extent that Essentia is referenced in the proposed additional facts, it is referenced only as context for the claims against HealthPartners and HPAI. (Id. at 145-48). HPAI does not oppose the Motion to Amend and, therefore, does not oppose the addition of the facts Tovar wishes to add. (See, Id., at 1:42-43; Mem., [Docket No. 57]).

Accordingly, the Court **grants** Tovar's Motion to Amend, [Docket No. 52], to the extent that Tovar seeks to include additional facts which relate to the claims against HealthPartners and HPAI.

3. Joining Olson as a Plaintiff in Tovar's surviving claim against HealthPartners and HPAI

Next, Tovar seeks to amend the Complaint to add Olson as a Plaintiff in proposed Count I, which alleges a violation of the Affordable Care Act by HealthPartners and HPAI. (See, [Docket No. 56-1], 2, 13). As set forth above, HealthPartners and HPAI do not object to this addition. (Mem., [Docket No. 57], 1; Nov. 7, 2017, Motion Hearing, Digital Record, 1:42-43, 1:49-50). In addition, the proposed addition of Olson as a Plaintiff satisfies the requirements for permissive joinder under Rule 20(a)(1), which states:

Persons may join in one action as plaintiffs if:

- (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) any question of law or fact common to all plaintiffs will arise in the action.

⁴ Moreover, Tovar agreed at the November 7, 2017, Motion Hearing that the Court need not parse out each proposed additional fact in its consideration of this portion of her Motion to Amend. (Nov. 7, 2017, Motion Hearing, Digital Record, 1:49-50).

Tovar and Olson's claims arise from the same transaction or occurrence, which Tovar describes as "Defendants work[ing] together to deny Olson medically necessary care because he is a transgender individual." (Mem. in Supp., [Docket No. 55], 6-7). More specifically, in the proposed Amended Complaint, Tovar and Olson allege: "Because of the Plan's categorical exclusion of '[s]ervices and/or surgery for gender reassignment,' Olson was denied insurance coverage for health care that his providers had deemed medically necessary." ([Docket No. 56-1], 7). Tovar and Olson further allege within the proposed Amended Complaint that a HealthPartners representative informed Tovar that HealthPartners intended to enforce the exclusion. (Id. at 8). At times, the proposed Amended Complaint alleges, this led to Tovar incurring out of pocket expenses for medications for which she received reimbursement "much later" and led to Olson being unable to timely access medically necessary care. (Id.). At one point, HealthPartners denied coverage for drugs prescribed for Olson because they were being prescribed for gender dysphoria. (Id. at 9-11). It is clear from the proposed Amended Complaint that Tovar's claim against HealthPartners and HPAI and Olson's proposed claim against HealthPartners and HPAI, in which Tovar and Olson jointly assert a right to relief, arise out of the same occurrences. Moreover, there is clearly a question of law or fact which is common to both Tovar's and Olson's claim, as they both allege that the exclusion provision in the Plan, as enforced by HealthPartners and HPAI, violated the ACA's anti-discrimination provision.

In light of Rule 15(a)(2)'s instruction that leave to amend a complaint should be freely given when justice so requires, because HealthPartners and HPAI do not oppose the addition of Olson as Plaintiff for the purposes of joining him to Tovar's existing claim against HealthPartners and HPAI in Count I, and because the requirements for permissive joinder of a

plaintiff in Rule 20(a)(1) are met in the present case, the Court will allow Tovar to amend her Complaint to add Olson as a Plaintiff for purposes of proposed Count I.

Accordingly, the Court **grants** Tovar's Motion to Amend her Complaint, [Docket No. 52], to the extent that Tovar seeks to join Olson as a Plaintiff in proposed Count I against HealthPartners and HPAI.

4. Allowing Olson to bring an independent ACA claim against Essentia

The question remains, however, whether this Court should allow Olson to bring an independent and direct claim against Essentia, which is no longer a party to this case. Because the original claim against Essentia by Tovar was dismissed and that dismissal was affirmed by the Eighth Circuit, Essentia is no longer a party to the case presently before the Court. Therefore, as Tovar acknowledged at the November 7, 2017, Motion Hearing, resolution of this issue involves analysis different than the analysis required to determine whether Olson could join Tovar's existing claim. (See, Nov. 7, 2017, Motion Hearing, Digital Record, 1:49-51).

“‘In order to amend a complaint to add additional parties after a responsive pleading has been filed, a movant must seek leave of the court pursuant to Rule 15 of the Federal Rules of Civil Procedure, and [s]he must demonstrate compliance with either Rule 19 or Rule 20, the procedural rules pertaining to joinder of parties.’” Ikeri, 2014 WL 12599634, at *8.

a. Federal Rule of Civil Procedure 20

Rule 20(a) states:

- (2) Defendants.** Persons . . . may be joined in one action as defendants if:
- (A)** any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B)** any question of law or fact common to all defendants will arise in the action.

“The purpose of [Rule 20] is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.” Mallak, 2015 WL 2250494, at *7. “Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.’ ‘Rule 20 permits all “reasonably related” claims against different parties “to be tried in a single proceeding.”’” Id. (citations omitted). “In ascertaining whether a particular factual situation constitutes a single transaction or occurrence for purposes of Rule 20, a case by case approach is generally pursued. No hard and fast rules have been established under the rule.” Mosley, 497 F.2d at 1333.

The record currently before the Court establishes that the requirements for permissive joinder under Rule 20 are satisfied. First, the proposed Amended Complaint asserts right to relief against Essentia, HealthPartners, and HPAI severally. (See, Prop. Amend. Compl., [Docket No. 56-1], 13-14); Fed. R. Civ. P. 20(a)(2)(A). Moreover, the proposed claim against Essentia is “with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences” as the claims against HPAI. In the present case, the proposed claim against Essentia and the claims against HPAI are all based upon the denial of certain services because of the blanket exclusion provision in the insurance policy at issue. Thus, the first requirement of Rule 20(a)(2) is met. In addition, there is a “question of law or fact common to all defendants [which] will arise in the action,” as required by Rule 20(a)(2)(B). The proposed claim against Essentia and the existing claims against HPAI all involve the same facts related to the denial of medical services. Thus, the second factor required by Rule 20(a)(2) for permissive joinder also exists in the present case.

In addition, joining Essentia to the present lawsuit and allowing Olson to pursue his claim herein would be efficient, as Tovar contends. (See, Mem. in Supp., [Docket No. 55], 7; Nov. 7, 2017, Motion Hearing, 1:51-52). “The purpose of [Rule 20] is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits. Single trials generally tend to lessen the delay, expense and inconvenience to all concerned.” Mosley, 497 F.2d at 1332.

For the reasons already stated above, on the record currently before the Court, the requirements of Rule 20 for permissive joinder are met.

However, the proposed Amended Complaint must also satisfy the requirements under Rule 15. See, Ikeri, 2014 WL 12599634, at *8.

b. Federal Rule of Civil Procedure 15

A party may successfully challenge a motion to amend a complaint under Rule 15 as futile if the amended claim ““would not withstand a [m]otion to [d]ismiss for failure to state a claim upon which relief can be granted.”” Streambend Props. III, LLC v. Sexton Lofts, LLC, 297 F.R.D. 349, 357 (D. Minn. 2014) (citations omitted). In other words, if a complaint, even with the proposed amendments, fails to state a claim that could withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a district court may deny a motion to amend as futile. See, Silva v. Metro. Life Ins. Co., 762 F.3d 711, 719 (8th Cir. 2014).

When evaluating a motion to dismiss under Rule 12(b)(6), courts “look only to the facts alleged in the complaint and construe those facts in the light most favorable to the plaintiff.” Riley v. St. Louis Cty. of Mo., 153 F.3d 627, 629 (8th Cir. 1998) (citing Double D Spotting Serv., Inc. v. Supervalu, Inc., 136 F.3d 554, 556 (8th Cir 1998)), cert. denied 525 U.S. 1178 (1999). Courts must accept as true all of the factual allegations in the complaint and draw all

reasonable inferences in the plaintiff's favor. Aten v. Scottsdale Ins. Co., 511 F.3d 818, 820 (8th Cir. 2008). Although the factual allegations in the complaint need not be detailed, they must be sufficient to "raise a right to relief above the speculative level," which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Essentia argues that Tovar's Motion to Amend, [Docket No. 52], should be denied because the proposed amendments which relate to Essentia are futile for the following reasons: (1) under the doctrine of res judicata; (2) because the proposed Amended Complaint does not sufficiently allege exhaustion of administrative remedies as required under ERISA; (3) Olson has not plead any economic harm from Essentia's alleged violation of the ACA; (4) the ACA provision on which Olson's proposed claim against Essentia is based has been stayed; and (5) the face of the proposed Amended Complaint does not factually support an allegation that Essentia has violated the ACA provision at issue in this case. (Mem. in Opp., [Docket No. 58], 13-21).

i. Res Judicata

Essentia's primary argument is that the doctrine of res judicata prohibits Olson from now bringing his proposed claim against Essentia.

The doctrine of res judicata prevents relitigation of claims on grounds that were raised or could have been raised in a prior suit. The interest in judicial economy allows a court to dismiss a complaint . . . upon the grounds of res judicata . . . Res judicata bars a claim if "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action."

Jorgensen v. Stewart, No. 16-cv-450 (DSD/KMM), 2016 WL 6080200, *2 (D. Minn. Oct. 17, 2016) (emphasis added); see, also, Costner v. URS Consultants, Inc., 153 F.3d 667, 673 (8th Cir. 1998).

Essentia contends that Olson's proposed claim against it is barred by res judicata because the district court dismissed Tovar's claims against Essentia and Olson is in privity with Tovar. Thus, according to Essentia, Olson's claim against Essentia could and should have been brought previously by Tovar prior to the dismissal of Essentia as a Defendant in the present case, and Tovar's failure to bring the claim on Olson's behalf leaves Olson's claim now barred by res judicata. (Mem. in Opp., [Docket No. 58], 14-16). Generally speaking, privity exists between Tovar and Olson if their interests "have a close relationship, bordering on near identity." See, Daley v. Marriott, International, Inc., 415 F.3d 889 (8th Cir. 2005).

Tovar argues that she was not in privity with Olson. She first asserts that a parent-child relationship is not of sufficient identity to show privity such as would bar Olson's proposed claim against Essentia, citing Freeman v. Lester Coggins Trucking, Inc., 771 F.2d 860 (5th Cir. 1985). (Mem. in Supp., [Docket No. 55], 9). In Freeman, the United States Court of Appeals for the Fifth Circuit considered whether collateral estoppel applied to bar Bobby Freeman from bringing a wrongful death suit on behalf of his wife and their three surviving minor children since Freeman had previously brought suit individually against the "same defendants for his own personal injuries arising from the same accident in which [his fourth child had] died." Id. at 861. The question before the Fifth Circuit was whether the claims Freeman brought in a representative capacity on behalf of his wife and their three surviving minor children "are precluded because of the adverse determination of *Freeman's* individual claims in the earlier suit." Id. at 862-63 (emphasis in original).

The Fifth Circuit noted the "ordinary rule [] that a party appearing in a representative capacity for others is not bound by the determination of an earlier suit in which he appeared only

in an individual capacity.” Id. at 863 (citations omitted). It noted that barring an individual who was not party to an earlier suit from pursuing his or her individual rights in a subsequent suit is subject to the due process requirements in the United States Constitution that such an individual have “[t]he right to a full and fair opportunity to litigate an issue.” Id. at 864-65 (citation omitted). “An underlying principle is that ‘[i]t is a violation of due process for a judgment [in a prior suit] to be binding on a litigant who was not a party or a privy and therefore has never had an opportunity to be heard.’ Parkland Hosiery Co., Inc. v. Shore, 439 U.S. 322, 327 n. 7 (1979).” Freeman, 771 F.2d at 965-66. Because the first suit was “brought by Freeman individually to recover only for his own personal injuries sustained in the accident,” the Fifth Circuit concluded that his wife and their three surviving children were not:

in privity with Freeman in his first suit, nor—within the contours of the limited exception of . . . permitting nonparties to be bound because of their virtual representation in the first suit [due to the identical nature of their interests to a party in the first suit]—were the mother and siblings so closely aligned in legal interest with Freeman as to justify a holding that their interests were adequately represented in the first suit.

Id. at 866. Accordingly, the Fifth Circuit held that Freeman was not collaterally estopped from bringing wrongful death claims on behalf of his wife and their three surviving minor children. Id.

Essentia attempts to distinguish Freeman by pointing out that the second suit therein involved “relatives asserting *independent* causes of action,” while in the present case “Tovar’s original complaint was wholly premised on the beneficiary benefits sought and allegedly denied to Olson.” (Mem. in Opp., [Docket No. 58], 16). Essentia’s argument is unpersuasive. In Freeman, the question was whether a parent not bringing representative claims on behalf of his minor children and rather pursuing only his own individual claims subsequently bars him from later bringing representative claims on behalf of his minor children which stem from the same general facts. In the present case, the question is whether a parent not bringing representative

claims on behalf of her minor child and rather pursuing only her own individual claims bars her child, who has since reached the age of majority—from later bringing his own direct claims which stem from the same general facts. The distinctions between Freeman and the present case are not so material as to persuade the Court that the rationale in Freeman is inapplicable here or erroneous.

In the circumstances of this particular case, Tovar by her personal claim against Essentia did not represent the same legal interest which Olson now seeks to pursue by a claim of his own against Essentia. As Judge Kyle noted in his May 11, 2016, Order, Tovar’s alleged injuries were not the same as Olson’s. (See, [Docket No. 22], 14-16); see, also, Tovar, 857 F.3d at 775 (“The district court concluded that Tovar’s son was the real ‘person aggrieved’ by Essentia’s actions, not Tovar.”). Moreover, the Eighth Circuit noted that Tovar’s claims were “on her own behalf,” because Olson “is not a plaintiff in this lawsuit, nor has [Tovar] brought a claim on his behalf.” Id. at 775 & n.2. In fact, the reason for the dismissal of Tovar’s claims against Essentia and the affirmation of that dismissal was that Tovar—unlike Olson, had he brought the claims directly—did not have standing. Id. Contrary to Essentia’s arguments, there has not been a final judgment on the merits in favor on Essentia on Olson’s claims. In fact, Olson’s claims were not even at issue in the first stage of this litigation, as Olson was not then a party and Tovar had not then sought to represent Olson’s interests.

As in the first suit in Freeman, the only claims in the first phase of the litigation presently before this Court were Tovar’s direct claims on her own behalf for her own alleged injuries. Under the rationale in Freeman, such claims would not prohibit Tovar from later bringing representative claims on behalf of Olson for Olson’s injuries, and it is equally logical to conclude that such claims would not prohibit Olson from individually bringing such direct claims on his

own behalf. See, Baloco v. Drummond Co., Inc., 767 F.3d 1229, 1251 n. 31 (11th Cir. 2014) (reading Freeman “as standing for the proposition that a claimant suing in his individual capacity in the first action is not precluded from pursuing a later cause of action as the beneficiaries’ legal representative”). Essentia has not provided, nor has this Court’s independent research discovered, any case law which holds that a parent, solely by virtue of the parent-child relationship, is in such privity with his or her child that he or she must bring a representative suit on behalf of that minor child in the same suit as the parent’s individual claims or the child’s claims are barred forever.⁵ Such a holding would likely run afoul of the Due Process Clause of the United States Constitution, which requires allowing a child who was never a party and whose claims and legal interests were not litigated the opportunity to present evidence and arguments on his direct claims. See, Freeman, 771 F.2d at 865-66.

Essentia has not shown that there was privity between Tovar and Olson such that the absence of a representative claim by Tovar on Olson’s behalf against Essentia in this case prior to Essentia’s dismissal as a Defendant relative to Tovar’s own claims bars Olson from now bringing his own individual claim directly against Essentia. Moreover, the interests Tovar sought to protect in her now-dismissed Title VII claim against Essentia are easily distinguishable from the interests Olson now seeks to protect in his personal proposed ACA claim against Essentia, thus their interests are not sufficiently identical to warrant the application of res judicata to now bar Olson’s proposed claim.

Accordingly, the Court holds that the doctrine of res judicata does not render Olson’s proposed claim against Essentia futile.

⁵ The Fifth Circuit in Freeman similarly noted: “[S]o far as we can ascertain, no appellate decision has ever applied collateral estoppel in like circumstances, whereas its application has consistently been rejected in the few reported instances in which sought.” 771 F.2d at 865.

ii. Exhaustion of Administrative Remedies

Essentia also contends that Tovar's proposed amendments are futile because the proposed Amended Complaint "fails to allege that [Tovar] or Olson exhausted ERISA administrative remedies." (Mem. in Opp., [Docket No. 58], 16-18).

If a participant in an employee benefit plan covered by the Employee Retirement Income Security Act ("ERISA") wishes to "bring a civil action under [29 U.S.C.] § 502(a)(1)(B) to recover benefits due under the terms of the plan[, . . . c]ourts have general required participants to exhaust the plan's administrative remedies before filing suit" Heimeshoff v. Hartford Life & Accident Ins. Co., 134 S. Ct. 604, 608 (2013).

Essentia argues from the premise that ERISA exhaustion requirements apply to Olson's proposed claim. However, it has been observed that the ERISA provision requiring exhaustion of administrative remedies does not apply to Olson's proposed claim, since Olson's proposed claim is not brought under ERISA; rather, Olson's proposed claim is brought under the ACA. See, In Rumble v. Fairview Health Services, No. 14-cv-2037 (SRN/FLN), 2015 WL 1197415, *11 & n.6 (D. Minn. March 16, 2015) (concluding that by enacting the ACA's anti-discrimination provision, "it appears that Congress intended to create a new, health-specific, anti-discrimination cause of action"). Moreover, Essentia has not provided and the Court's independent research has not revealed a case in which the Eighth Circuit has examined whether an ACA-based, gender-discrimination claim requires prior exhaustion of ERISA administrative remedies.

In any event, even if the ERISA requirement for exhaustion of administrative remedies applies to Olson's proposed claim, ERISA requires only that prior to filing in Federal Court, administrative remedies which are "required under the particular ERISA plan" must be exhausted. See, Angevine v. Anheuser-Busch Companies Pension Plan, 646 F.3d 1034, 1037

(8th Cir. 2011) (citing Chorosevic v. MetLife Choices, 600 F.3d 934, 941 (8th Cir. 2010)) (emphasis added). Essentia fails to identify any provision within the Plan at issue in the present case which provides for administrative remedies, much less requires them. (See, Mem. in Opp., [Docket No. 58], 17-18). Rather, Essentia merely asserts generally that there is no allegation that Tovar or Olson “properly pursued and exhausted ERISA administrative remedies” or “formally appealed the decision.” (Id. at 17).

The Plan is included in the record presently before the Court, and the “Complaints” section reads:

The Plan has a complaint procedure to resolve complaints and disputes. Complaints should be made in writing or orally. They may concern the provision of care by network providers, administrative actions, or claims related to the Plan, including breach, meaning or termination. The complaint system seeks to resolve a dispute which arose during the time of your coverage, or application for coverage.

(Bunde Dec., Exh. A, [Docket No. 14-1], 55). There is no requirement of a “formal appeal,” and Essentia acknowledges that Tovar sent a letter related to the exclusion provision at issue in Olson’s proposed claim against Essentia. (See, Mem. in Opp., [Docket No. 58], 18). Moreover, the proposed Amended Complaint alleges that: “On March 24, 2015, Tovar officially appealed the Plan’s categorical exclusion of gender reassignment treatments” and “Tovar filed a second appeal on May 9, 2015.” (Prop. Amend. Compl., [Docket No. 56-1], 8).

Taking the facts pled in the proposed Amended Complaint as true, it is reasonable to infer that any required administrative remedies were adequately exhausted prior to Olson seeking to bring his now-proposed claim in Federal Court. For purposes of the present Motion to Amend, Essentia has not shown that the failure to specifically allege an exhaustion of administrative remedies renders Olson’s proposed claim against Essentia futile.

iii. Economic Harm

Next, Essentia contends that the proposed amendments are futile because there is only the general assertion within the proposed Amended Complaint that Essentia’s alleged violation of the ACA “caused Olson economic harm and emotional distress,” (see, Prop. Amend. Compl., [Docket No. 56-1], 14), and there are no specific facts alleged within the proposed Amended Complaint to support such an assertion. (Mem. in Opp., [Docket No. 58], 18-19). However, Olson’s proposed ACA claim is brought under Section 1557 of the ACA, which does not require a showing of economic harm. See, 42 U.S.C. § 18116. In other words, economic harm is not a required element of Olson’s ACA claim, and Essentia does not explain why a failure to allege specific facts in support of the general assertion of economic harm is fatal to Olson’s proposed ACA claim under Section 1557. (Mem. in Opp., [Docket No. 58], 18-19).

Therefore, Essentia’s argument that a failure to plead facts sufficient to allege a reasonable assertion of economic harm renders Olson’s proposed ACA claim futile also fails.

iv. The ACA Provision at Issue has been Stayed

Essentia also argues that the United States Department of Health and Human Services’ (“HHS”) regulations interpreting Section 1557 of the ACA—the anti-discrimination provision at issue in Olson’s proposed claim—to prohibit discrimination based on gender identity (including exclusion of services related to gender transitions) suffer from “questionable legality,” and therefore, Olson’s proposed claim is “highly dubious.” (Mem. in Opp., [Docket No. 58], 19-20). Essentia bases this argument on the United States District Court for the Northern District of Texas’ 2016 opinion in Franciscan Alliance, Inc. v. Burwell, 227 F. Supp. 3d 660 (N.D. Tex. 2016). (Mem. in Opp., [Docket No. 58], 19-20).

In Franciscan Alliance, Inc., United States District Judge Reed O'Connor of the Northern District of Texas granted the plaintiffs' motion for a preliminary injunction enjoining enforcement of the HHS' administrative Rule which interpreted Section 1557's prohibition of "sex discrimination" to include discrimination because of gender identity. See, 227 F. Supp. 3d at 669-70. In his analysis of the motion for a preliminary injunction, Judge O'Connor concluded that (1) the HHS violated the Administrative Procedures Act by expanding the definition of sex discrimination conflicting with the definition incorporated in Section 1557 of the ACA itself, and (2) the plaintiffs demonstrated a substantial likelihood of success on their claim that the administrative Rule in question violated the Religious Freedom Restoration Act as applied to the private, non-state plaintiffs. Id. at 684-93. After also concluding that the plaintiffs had sufficiently demonstrated the likelihood of irreparable harm absent preliminary relief and that the balance of hardships and public interest weighed in favor of granting preliminary relief, Id. at 639-95, Judge O'Connor issued a nationwide injunction on enforcement of "the prohibition of discrimination on the basis of 'gender identity' and 'termination of pregnancy.'" Id. at 695.

Thereafter, on July 10, 2017, Judge O'Connor granted the HHS' motion for a stay to allow HHS to "reassess the reasonableness, necessity, and efficacy of the two aspects of the [administrative Rule] that are challenged in this case." Franciscan Alliance, Inc. v. Price, No. 7:16-cv-00108-O, 2017 WL 3616652, *5 (N.D. Tex. July 10, 2017). Since the July 10, 2017, Order, the defendants have filed two status reports with Judge O'Connor, indicating that a new proposed rule is being reviewed and cleared through the Executive Branch. (Case No. 16-cv-108-O, Docket Nos. 106 and 109.) As of the most recent status report, filed on October 16, 2017, HHS is still abiding by the nationwide preliminary injunction. (Id. at Docket No. 109, p.2.)

Essentia points out that in Rumble, 2017 WL 401940, Judge Nelson granted the defendants' motion to stay the litigation of a Section 1557 claim in light of the injunction on the administrative Rule issued in Franciscan Alliance, Inc. (Mem. in Opp., [Docket No. 58], 20). In addition to the nationwide injunction in Franciscan Alliance Inc., Judge Nelson also noted that the United States Supreme Court had granted certiorari in Gloucester County School Board v. G.G., 137 S. Ct. 369 (2016), which "involve[s] essentially the same underlying issue of whether Title IX's prohibition against sex-based discrimination includes gender identity discrimination." Rumble, 2017 WL 401940, at *4. Further recognizing that at least one other Federal District Court has stayed proceedings pending the resolution of Gloucester County, Judge Nelson, "while acknowledging the harm of delay to Plaintiff, [found] that the Court's judicial resources are best served by obtaining the Supreme Court's ruling in Gloucester County." Id. Accordingly, Judge Nelson granted the motion before her and stayed the proceedings with respect to the plaintiff's Section 1557 claim. Id.

Essentia argues that these opinions render almost impossible Olson's chances of success on his proposed claim against Essentia. (Mem. in Opp., [Docket No. 58], 20). However, the likelihood of success, small as it may be, does not render a claim "futile" for purposes of the present Motion to Amend. See, Murrell v. Zimmer, Inc., No. 9-cv-757 (JRT/JJK), 2009 WL 10678426, * (D. Minn. Nov. 30, 2009) ("Likelihood of success on the new claim or defenses is not a consideration for denying leave to amend unless the claim is clearly frivolous.") (Citation omitted.)). Although they may be influential in the context of a potential later motion to stay or on an ultimate resolution of the merits of the present case, Franciscan Alliance, Inc. and Rumble do not control the analysis or outcome of the present Motion to Amend and they do not render Olson's proposed claim against Essentia futile at this time.

v. **Sufficiency of Factual Allegations**

Finally, Essentia contends that “even if [Olson] were able to assert a Section 1557 claim against Essentia . . . , the proposed amended complaint establishes that Essentia did not violate the [*sic*] Section 1557 regulations by maintaining the plan at issue.” (Mem. in Opp., [Docket No. 58], 20-21).

The stated purpose of 45 C.F.R. § 92.1 “is to implement Section 1557 of the Patient Protection and Affordable Care Act (ACA) (42 U.S.C. 18116), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.” As relevant to Essentia’s argument, the regulation continues:

The effective date of this part shall be July 18, 2016, except to the extent that provisions of this part require changes to health insurance or group health plan benefit design (including covered benefits, benefits limitations or restrictions, and cost-sharing mechanisms, such as coinsurance, copayments, and deductibles), such provisions, as they apply to health insurance or group health plan benefit design, have an applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2017.

45 C.F.R. § 92.1.

The proposed Amended Complaint asserts that “Essentia requested that HealthPartners lift the exclusion for the Plan starting January 1, 2016, and HealthPartners did so.” (Prop. Amend. Compl., [Docket No. 56-1], 12-13). Thus, Essentia argues, because the exclusion now challenged was eliminated from the Plan prior to the effective date of 45 C.F.R. § 92.1, it is clear from the face of the proposed Amended Complaint that Olson cannot obtain relief on his proposed claim that Essentia violated Section 1557. But the prohibition in Section 1557 was effective in March of 2010. Although the implementing regulation did not take effect until after the now-challenged exclusion provision was removed from the Plan, the promulgation and implementation of an administrative regulation is not necessary for a statute—or the prohibitions

therein—to be in effect. See, Metzger v. Lyng, 864 F.2d 75 (8th Cir. 1988). At the time period relevant to the present case, Section 1557 of the ACA was in effect. The proposed Amended Complaint explicitly alleges that Essentia violated Section 1557 of the ACA, and the fact that a related administrative regulation was not effective until sometime later has no effect on the potential validity (or as Essentia states it—futility) of Olson’s proposed claim for purposes of the Rule 12(b)(6) analysis subsumed in the present Rule 15 Motion to Amend.

Therefore, Essentia’s argument that the effective date of a related administrative regulation renders Olson’s proposed claim futile likewise fails at this time.

III. CONCLUSION

In summary, for all of the reasons set forth above, the Court **grants** Tovar’s Motion to Amend, [Docket No. 52], to the extent that it seeks to amend the case caption to reflect HPAI as a Defendant; **grants** Tovar’s Motion to Amend, [Docket No. 52], to the extent that it seeks to add Olson as a Plaintiff and join him to Tovar’s existing claim against HPAI; **grants** Tovar’s Motion to Amend, [Docket No. 52], to the extent that it seeks to include additional factual allegations in the Amended Complaint; and **grants** Tovar’s Motion to Amend, [Docket No. 52], to the extent that it seeks to add a claim by Olson individually against Essentia, therefore necessarily re-joining Essentia as a Defendant to this action.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that Plaintiffs’ Motion to Amend the Complaint, [Docket No. 52], is **GRANTED**.

Dated: December 1, 2017

s/Leo I. Brisbois
Leo I. Brisbois
United States Magistrate Judge
District of Minnesota