

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division

ROBERT L. VAZZO, LMFT, individually )	
and on behalf of his patients, DAVID H. )	
PICKUP, LMFT, individually and on )	Civil Action No.: <u>8:17-cv-02896-CEH-AAS</u>
behalf of his patients, )	
)	
Plaintiffs, )	<b>INJUNCTIVE RELIEF SOUGHT</b>
)	
v. )	
)	
CITY OF TAMPA, FLORIDA, )	
)	
Defendant )	

---

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE REPLY  
IN SUPPORT OF THEIR MOTION TO AMEND COMPLAINT**

Pursuant to M.D. Fla. Local Rule 3.01(D), Plaintiffs, Robert L. Vazzo, LMFT, and David H. Pickup, LMFT, individually and on behalf of their patients (“Plaintiffs”), move this Court for leave to file an eight-page Reply in support of their Motion to Amend Complaint. (Dkt. 71). Plaintiffs stand ready to file said Reply within three (3) business days of the Court granting leave. Plaintiffs’ Reply would show the Court that Defendant, City of Tampa (“City”), has identified no prejudice and no plausible grounds to deny amendment. In particular, the Reply would show that:

1. The City’s claims that Plaintiffs’ amendment is untimely, and that the addition of parties and allegations at this juncture would prejudice the City, are wholly devoid of merit. As this Court’s Case Management Order (“CMO”) makes plain, Plaintiffs were given until June 18, 2018 **“to Add Parties or to Amend Pleadings.”** (Dkt. 63, at 2 (bold emphasis original)). Plaintiffs filed their Motion to Amend on May 25th, **twenty-four days prior to this Court’s deadline.** Plaintiffs have timely sought to amend their Complaint, any no prejudice can possibly result from either the Court’s CMO or from Plaintiffs’ compliance with the CMO.

2. The City's attempt to equate the prejudice to existing parties from a permissive intervention with the so-called "prejudice" from Plaintiffs' compliance with this Court's CMO is similarly unavailing. Permissive intervention under Rule 24 and amendment of the Complaint under Rule 15 are two very different things, subject to two very different standards. This Court properly exercised its discretion to recommend that Equality Florida's permissive intervention be denied, and that decision was adopted by the Article III judge after neither the City nor Equality Florida chose to object. On the other hand, this Court does not have discretion to deny Plaintiffs' timely, first-time request to amend the Complaint, because "the rule as applied in this circuit is ... [that] a plaintiff **must** be given **at least one chance** to amend the complaint... ." *Long v. Satz*, 181 F.3d 1275, 1279 (11th Cir. 1999) (emphasis added). Tellingly, the City fails to even acknowledge this rule, let alone provide the Court with any good reason to violate it.

3. Not surprisingly, the authorities cited by the City do not support the City's claims of prejudice or the denial of leave to amend. For example, in both *Tampa Bay Water v. HDR Engr'g, Inc.*, 731 F.3d 1171 (11th Cir. 2013), and *Campbell v. Emory Clinic*, 166 F.3d 1157 (11th Cir. 1999) (both cited at page 7 of the City's response), the plaintiffs were seeking to amend their complaint for a **second or third time**, and **after the close of discovery**. See *Tampa Bay*, 731 F.3d at 1175 (noting that plaintiff was seeking "leave to amend its complaint for a **second time after the close of discovery**" (emphasis added)); *Campbell*, 166 F.3d at 1162 & n.18 (noting that plaintiffs sought leave to amend for the **third time** and "**more than one year after discovery had ended, after dispositive motions have been filed, and between five-and-six years after the lawsuits were begun**" (emphasis added)). In sharp contrast, Plaintiffs here are seeking to amend their Complaint for the **first time**, 24 days prior to the deadline in this Court's CMO, **13 months** prior to the close of discovery, and **19 months** prior to trial.

4. The City's contention that the addition of a new plaintiff is unduly prejudicial because it would increase discovery and expense also defies reason. Surely the City does not believe that it would be more economical for the proposed new plaintiff to sue the City separately, in a different suit to duplicate this one. Any increase in costs in this litigation from the addition of a new plaintiff is insignificant and pales in comparison with requiring a new and separate lawsuit.

5. The City's contentions that the proposed new plaintiff lacks standing, or that the new allegations are not "relevant" to the City's defenses, or that the amendment does not cure alleged deficiencies, are all arguments that must be directed at the merits of the Amended Complaint after it is filed, and not at whether or not the amendment should be allowed. In any event, the City utterly fails to explain its bald assertion that the proposed amendment does not cure alleged deficiencies (City Response, p. 9), which is reason alone to reject the City's arguments.

6. On June 11, 2018, counsel for Plaintiffs conferred with counsel for the City, and was advised that the City opposes this Motion for Leave to File a Reply because the City is concerned about increased litigation costs. However, if the City were truly concerned about the unnecessary increase in litigation costs, it would not have refused to consent to a first-time amendment of the Complaint, in a Circuit whose "rule" is to allow them, in a district court which "**expects** that a party alleging that a pleading fails to state a claim **will** ... agree to an order permitting the filing of a curative amendment pleading" (dkt. 63, p. 5 (emphasis added)), and in a case where the amendment is sought more than three weeks prior to the Court-imposed deadline.

WHEREFORE, to further expound upon the foregoing and other deficiencies in the City's response, Plaintiffs respectfully request that this Court grant them leave to file an eight-page Reply in support of leave to amend their Complaint, to be filed within three business days of the Court's Order.

Respectfully submitted,

/s/ Horatio Mihet  
Mathew D. Staver  
Horatio G. Mihet  
Roger K. Gannam  
Daniel J. Schmid\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
Email: dschmid@lc.org

*Attorneys for Plaintiffs*

\*Admitted *pro hac vice*

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of June, 2018, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic service system.

/s/ Horatio Mihet  
Horatio G. Mihet  
Attorney for Plaintiffs