

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SCHYLER Z. GRODMAN, M.D.,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER,

Defendant.

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Civil Action No. 5:23-cv-00210-H

PLAINTIFF’S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Plaintiff Schyler Z. Grodman, M.D., (“Grodman”) hereby files this Motion for Leave to File Plaintiff’s First Amended Complaint (attached as Exhibit A), pursuant to Fed. R. Civ. P. 15(a)(2) and Local Rule 15.1(b), and pursuant to the Court’s Order dated November 29, 2023 [ECF No. 13] and in support thereof shows as follows:

INTRODUCTION

Plaintiff Grodman moves for leave to amend his Complaint, removing two claims for discrimination and retaliation under the Americans with Disabilities Act (“ADA”) and Texas Commission on Human Rights (“TCHRA”) and adding a Procedural Due Process claim against Texas Tech and under 42 U.S.C. § 1983 against individual Defendant Dr. Samer Zaid-Kaylani (“Kaylani”). Exhibit A ¶¶ 64–94. Finally, the Amended Complaint also modifies and clarifies that Grodman’s claims under the Rehabilitation Act include claims against Texas Tech for its failure to accommodate, retaliation, and discrimination against Plaintiff.

The first two amendments (removing the claims that were subject to Texas Tech’s Partial Motion to Dismiss) were agreed to in writing by the parties and, as such, should be permitted under

Rule 15(a)(2)’s language allowing for amendment of pleadings “with the opposing party’s written consent.” *Id.*

Regarding Grodman’s procedural due process claims against Texas Tech and Dr. Kaylani and the clarifications to Grodman’s claims under the Rehabilitation Act (which were not subject to Defendant’s Partial Motion to Dismiss), this Court should allow Grodman to amend his complaint under Rule 15(a)(2) because Grodman’s first amendment of his claims, at this early pre-discovery stage, does not cause undue prejudice to any opposing party, is not being brought in bad faith or for any other wrongful purpose, and is in the interest of justice because it enables Grodman to pursue recourse for all of Defendants’ improper actions against him.

FACTUAL BACKGROUND

On September 7, 2023, Plaintiff Grodman filed his Original Complaint, alleging violations of the Americans with Disabilities Act (ADA), Texas Commission on Human Rights Act (TCHRA), and Rehabilitation Act for various discriminatory improper acts by Defendants related to Grodman’s attention deficit hyperactivity disorder (“ADHD”), Autism Spectrum Disorder (“ASD”), depression, and social anxiety and for Defendants procedurally improper termination of Grodman from his medical residency program [ECF No. 1].

Texas Tech filed a Partial Motion to Dismiss on October 4, 2023, alleging lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) for Grodman’s ADA and TCHRA claims based on sovereign immunity. [ECF No. 5].

Grodman now files this motion for leave to file his First Amended Complaint, removing the claims that Texas Tech sought to dismiss (thus, mooted said motion) and bringing additional claims based on due process violations. This request is not for delay, but so that justice may be done. Indeed, Texas Tech and Dr. Kaylani deprived Grodman of his constitutional right to

procedural due process before he was terminated from his medical residency when Kaylani and Texas Tech orchestrated closed-door meetings and voted to terminate Grodman before any probation, review, or termination actions were disclosed to Grodman.

ARGUMENTS AND AUTHORITIES

A. Plaintiff's Motion for Leave Should Be Granted Under Rule 15(a)(2)

Fed. R. Civ. P. 15(a)(2) provides that a party may amend as a matter of course “with the opposing party’s written consent” and that “[t]he court should freely give leave when justice so requires.” *Id.* Rule 15(a) thus “evinces a bias in favor of granting leave to amend.” *Jones v. Robinson Prop. Grp. L.P.*, 427 F.3d 987, 994 (5th Cir. 2005) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002)). In determining whether to grant leave, the Court considers facts “such as whether there has been undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party, and futility of amendment.” *Id.*

Here, Grodman’s counsel conferred with Defendant Texas Tech’s counsel, and Defendant’s counsel consented for Grodman to amend his complaint, to the extent the Amendment removed Grodman’s ADA and TCHRA claims (leaving his Rehabilitation Act claims as pled). Regarding Grodman’s procedural due process claims and the clarification to the claims Plaintiff is bringing under the Rehabilitation Act (to the extent these are construed as additional claims), this is Grodman’s first amendment of his claims, coming at an early stage of the case, and his new amended claim are not being brought in bad faith or due to repeated failure to cure deficiencies in prior allowed amendments. In fact, Grodman has willingly removed claims to make sure that wasn’t the case. Further, Plaintiff’s amended claims arise from the same set of operative facts

plead in Plaintiff's original complaint. As such, there is little to no prejudice to Defendants. As such, Grodman's Motion for Leave should be granted.

B. Granting Grodman Leave to Amend Moots Texas Tech's Partial Motion to Dismiss.

"Many district courts - including [those in this Circuit] - routinely deny as moot motions to dismiss that are filed prior to an amendment of a complaint." *Rodgers v. Gusman*, No. 16-16303, 2019 WL 186669, at *2 & n.16 (E.D. La. Jan. 14, 2019) (collecting cases); see also *Garcia v. City of Amarillo, Texas*, No. 2:18-CV-95-D-BR, 2018 WL 6272461, at *1 (N.D. Tex. Oct. 29, 2018) ("[A]n amended complaint, which supersedes the original complaint as the operative live pleading, renders moot a motion to dismiss the original complaint."); *Xtria, LLC v. Int'l Ins. Alliance Inc.*, No. 3:09-CV-2228-D, 2010 WL 1644895, at *2 (N.D. Tex. Apr. 22, 2010); *Probado Technologies Corp. v. Smartnet, Inc.*, No. C-09-349, 2010 WL 918573, at *1 (S.D. Tex. Mar. 12, 2010). And while a court may apply a pending Rule 12 motion to a newly amended complaint, it should nonetheless deny the pending motion as moot if that application "would cause confusion or detract from the efficient resolution of the issues...." *Rodgers*, 2019 WL 186669, at *2 (In that situation, "it makes sense to require the defendant to file a new motion specifically addressing the amended complaint.").

Because Grodman's Amended Complaint removed the causes of action upon which Texas Tech moved for dismissal (Grodman's ADA and TCHRA claims), there is no reason for the Court or the parties to spend additional resources briefing or arguing the motion. Accordingly, Grodman has asked the Court to deny Defendant Texas Tech's Partial Motion to Dismiss as moot. *See* Plaintiff's Response to Defendant's Partial Motion to Dismiss [ECF No 11].

CONCLUSION

Grodman respectfully requests that the Court grant his Motion for Leave to file his First Amended Complaint, attached hereto as Exhibit A.

Date: December 4, 2023

Respectfully Submitted,

/s/ Jeffrey M. Tillotson

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CERTIFICATE OF CONFERENCE

I certify that I personally conferred with Joseph Keeny, counsel for Defendant Texas Tech University Health Sciences Center multiple times, including on November 29-30, 2023, via email. Counsel for Texas Tech indicated it did not consent to Plaintiff's Motion for Leave to the extent the Amended Petition brought new claims against Texas Tech, including additional claims under the Rehabilitation Act.

/s/ Enrique Ramirez-Martinez

Enrique Ramirez-Martinez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Original Complaint and Jury Demand was electronically filed with the Clerk of the Court using the CM/ECF system on December 4, 2023.

/s/ Jeffrey M. Tillotson

Jeffrey M. Tillotson