

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JUDITH WOODBURY,

Plaintiff,

v.

Case No: 8:16-cv-3229-T-30JSS

C.R. BARD, INC.,

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint (Dkt. 6) and Plaintiff's Response (Dkt. 9), in which Plaintiff requested leave to amend her complaint. Because the Court grants Plaintiff leave to amend her complaint, the Court denies Defendant's motion as moot.

On November 18, 2016, Plaintiff filed a complaint (Dkt. 1) alleging injuries that resulted from her doctor's use of Composix Mesh to repair a hernia in 1998. Plaintiff served Defendant with the complaint on December 5, 2016. On December 27, 2016, Defendant filed a motion to dismiss under Rule 12(b)(6) (Dkt. 6), alleging that Plaintiff's claims are barred by the applicable statute of limitations, statute of repose, and a lack of privity. Plaintiff filed a response (Dkt. 9) on January 10, 2017. Plaintiff argued that dismissal is inappropriate and requested the Court's leave to amend her complaint "to clarify" the timeline of events and the issue of privity.


Pursuant to Federal Rule of Civil Procedure 15, a plaintiff may amend the complaint once “as a matter of course” within twenty-one days after being served with a Rule 12(b) motion. Fed. R. Civ. P. 15(a)(1)(B). After that time has passed, a plaintiff can amend only if it obtains the other party’s written consent or the court’s leave. Fed. R. Civ. P. 15(a)(2). The court “should freely give [this] leave when justice so requires.” *Id.*

Plaintiff filed her response requesting leave to amend her complaint within twenty-one days of being served with Defendant’s Rule 12(b)(6) motion. At that time, Plaintiff could simply have amended her complaint without the Court’s leave. Accordingly, the Court will grant Plaintiff leave to amend.

It is therefore ORDERED AND ADJUDGED that:

1. Plaintiff’s request for leave to file an amended complaint is GRANTED.
2. Defendant’s Motion to Dismiss (Dkt. 9) is DENIED as moot.

DONE and **ORDERED** in Tampa, Florida, on January 18th, 2017.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record