

DANTE EDOARDO DALY

300 Crandon Terrace
Baldwinsville, New York 13207

Phone: 696-683-5165

PHILIP M. HALPERN,
United States District Judge
c/o Pro Se Office
Room 200
40 Foley Square
Southern District of New York
New York, New York 10007

Re: 19-CV-04642 (PMH) United States D

Your Honor Judge Halpern:

This communication is made in response to your letter dated January 20, 2021, denying my Motion to Supplement my Second Amended Complaint filed on February 11, 2021.

As a result, I find it necessary to refile my Motion to Supplement my Second Amended Complaint under the Court's Individual Practices Rule 2(C).

The pertinent facts are as follows:

1. I timely filed my original complaint

Amended Complaint on February 11, 2021.

2. Defendant's Answer to my Complaint was filed on February 19, 2021, just

over one year later and less than two (2) months ago.

3. In the six weeks since receiving Defendant's Answer I have recognized various issues that should be clarified for the Court and addressed directly in a Reply to Defendant's Answer. My Supplement was an attempt to accomplish both tasks in a single pleading for judicial economy and clarity for the Court.

4. Since the Court wishes to require another Amended Complaint on my part, I will accede to the Court's wishes and file separate documents that were parts of the

Amended Complaint as his motion to amend and denies same based upon consideration of Plaintiff's request (Doc. 92), the proposed Third Amended Complaint (Doc. 99), and Defendant's opposition (Doc. 107). See *In re Best Payphones, Inc.*, 450 F. App'x 8, 15 (2d Cir. 2011) (upholding construction of pre-motion letter as motion).

In sum, Plaintiff seeks leave to amend his pleading in order to provide additional evidence in support of his position and to "clarify" his claims. Under Federal Rule of Civil Procedure 15(a)(2), "[t]he court should freely give leave [to amend a pleading] when justice so requires." Upon due consideration of the circumstances herein, justice does not require granting Plaintiff leave to file a Third Amended Complaint. The Second Amended Complaint remains the operative pleading in this action.

To the extent that Plaintiff wishes to support the claims for relief that survived Defendant's motion to dismiss with additional evidence, he will have the opportunity to provide such evidence on a motion for summary judgment or at trial.

The Clerk of the Court is respectfully directed to terminate the motion sequence pending at Doc. 107.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: White Plains, New York
April 26, 2021

rejected pleading: an Amended Complaint which I have entitled Third Amended Complaint for clarity going forward, and a Reply to Defendant's Answer to my previously filed complaints.

5. In the year since my Second Amended Complaint was filed, I have been able to locate pertinent information on salaries paid to Defendant's employees during the period I was employed by Defendant and thereafter that substantiate the allegations that Defendant was facing potential lawsuits based on gender pay discrimination; evaluate Defendant's Affirmative Defenses included in Defendant's Answer recently received that bear on various parts of my complaints, current allegations and applicable previous observations; and obtain appropriate supporting and evidentiary materials that should be exhibits to my Complaint.

6. Further, I feel it is necessary to clarify the statutory foundations of my lawsuit within my Complaint to assure all participants understand the significant differences between the Americans with Disabilities Act of 1990 and the successive Amendments Act of 2008 and the Congressional spirit and intent of both laws and their application to the facts of my case.

7. Finally, evidence from the Social Security Administration received in February 2020, and other evidence received from other individuals and entities after the filing of the instant litigation should be included in the filing of my Complaint.

8. In submitting the Supplement, I attempted to clarify my stated claims, provide a detailed factual recounting of the actions and events that resulted in this action, and present currently available existing, pre-discovery credible, admissible evidence to

focus all participants' attentions to the completion of the litigation and simplify the requirements for bringing the litigation to final judgment in this Court.

9. My goals will remain the same if the Court grants my Motion for Leave to File an Amended Complaint, a copy of which is attached to this letter.

10. I will be happy to provide any additional information requested by the Court to support this request.

Sincerely yours,

Dante E. Daly

CC via ECF:

Irma Cosgriff (IC 1320)
Associate County Attorney, of Counsel
600 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601