IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK GOMEZ, Plaintiffs, v. CSL PLASMA, INC., Defendant.	Case No. 1:20-cv-02488

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to address the important issue raised in Plaintiff's motion for partial summary judgment – whether blood plasma donation centers are "public accommodations" under Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12181(7). They are, for the reasons explained below. Congress charged the Department of Justice (Department) with implementing Title III of the ADA by promulgating regulations, issuing technical assistance, and bringing lawsuits in federal court to enforce the statute. 42 U.S.C. §§ 12186(b)-(c), 12188(b), 12206. Accordingly, the Department has a strong interest in the proper interpretation and application of Title III.

The parties dispute whether the act of procuring plasma constitutes a "service," making plasma donation centers "service establishments" under 42 U.S.C. § 12181(7)(F) and therefore "public accommodations" under Title III. The Third Circuit and the Tenth Circuit have both

[1] The Attorney General is authorized "to attend to the interests of the United States" in any case pending in federal court. 28 U.S.C. § 517.

ruled that plasma donation centers are service establishments. *See Matheis v. CSL Plasma, Inc.*, 936 F.3d 171, 176-78 (3d Cir. 2019); *Levorsen v. Octapharma Plasma, Inc.*, 828 F.3d 1227, 1230-35 (10th Cir. 2016). The Fifth Circuit reached the opposite conclusion, holding that plasma donation centers are not service establishments. *Silguero v. CSL Plasma, Inc.*, 907 F.3d 323, 327-32 (5th Cir. 2018).[2] For the reasons explained below, this Court should join the Third Circuit and the Tenth Circuit to find that plasma donation centers are service establishments and thus public accommodations under Title III.

I. PROCEDURAL BACKGROUND

Plaintiff Mark Gomez, who is deaf, sued Defendant CSL Plasma, Inc., in April 2020 alleging that Defendant violated the ADA by refusing to provide him an American Sign Language interpreter, making it impossible for him to donate plasma at Defendant's plasma donation center. *See* Compl., ECF No. 1. Plaintiff has moved for partial summary judgment on the legal issue that Defendant is a service establishment and therefore a public accommodation under Title III. *See* Pl.'s Mot. for Partial Summ. J., ECF No. 35. Defendant has not yet responded to Plaintiff's motion for partial summary judgment, but in its answer to the complaint it denies that it is a service establishment. *See* Def.'s Answer to Compl., ECF No. 24, at 8-9.

II. STATUTORY AND REGULATORY BACKGROUND

Congress enacted the ADA in 1990 to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Congress found that discrimination has diminished the ability of people with

[2] The United States filed amicus briefs in *Levorsen* and *Silguero* explaining that plasma donation centers are service establishments. *See* Br. for U.S. as Amicus Curiae Supporting Neither Party, *Silguero v. CSL Plasma, Inc.*, 907 F.3d 323 (5th Cir. 2018) (No. 17-41206), 2018 WL 889624; Br. for U.S. as Amicus Curiae Supporting Appellant and Urging Reversal, *Levorsen v. Octapharma Plasma, Inc.*, 828 F.2d 1227 (10th Cir. 2016) (No. 14-4162), 2015 WL 2148078.

disabilities "to fully participate in all aspects of society," including "employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." *Id.* § 12101(a)(1), (a)(3). In the ADA, therefore, Congress established a broad range of prohibitions on discrimination against people with disabilities in employment (Title I), in the provision of state and local government services, programs, and activities (Title II), and in public accommodations and commercial facilities (Title III).

Title III provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." *Id.* § 12182(a). An entity is a public accommodation if its operations affect commerce and if it falls into at least one of twelve categories listed in the statute. *Id.* § 12181(7). One of these twelve is the "service establishment" category. *Id.* § 12181(7)(F).

The "service establishment" category lists several examples of entities that are service establishments and therefore public accommodations: "a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment." *Id.* The regulation implementing Title III makes clear that the examples listed in § 12181(7)(F) are only illustrations of entities that qualify as service establishments, not a complete list. 28 C.F.R. Pt. 36, App. C § 36.104 (explaining that while the list of twelve categories of public accommodations "is exhaustive, the representative examples of facilities within each category are not. Within each category only a few examples are given.").

III. ARGUMENT

The plain meaning of the term "service establishment" in 42 U.S.C. § 12181(7)(F) encompasses plasma donation centers because plasma donation centers are "establishments" that provide a "service." Plasma donation centers are therefore public accommodations under Title III of the ADA. The expansive purpose of the ADA reinforces this interpretation of 42 U.S.C. § 12181(7)(F). The Third Circuit and the Tenth Circuit have both correctly held that plasma donation centers are "service establishments." The Fifth Circuit has held that plasma donation centers are not "service establishments," but for the reasons explained in section III.A.ii below, that holding was incorrect.

A. Under the Plain Meaning of Title III of the ADA, Plasma Donation Centers Are "Service Establishments" and Are Therefore "Public Accommodations."

Because the ADA does not define the term "service establishment," the Court must give the term its "ordinary, contemporary, common meaning." *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). There appears to be no dispute that plasma donation centers are "establishments."[3] Thus, the crux of the parties' disagreement over Title III coverage in this case is whether plasma donation centers provide a "service."

Under any ordinary definition of the term, the act of collecting plasma constitutes a "service." One dictionary defines "service" as "a helpful act." *Merriam-Webster Dictionary*, merriam-webster.com/dictionary/service. Another defines "service" as "conduct or performance that assists or benefits someone or something." *Webster's Third New Int'l Dictionary* 2075

[3] Defendant has not yet responded to Plaintiff's motion for partial summary judgment, but when it previously addressed the question of whether it is a service establishment under Title III, it conceded that it is an "establishment." *Silguero v. CSL Plasma, Inc.*, 907 F.3d 323, 328 (5th Cir. 2018).

(2002) (cited in *Levorsen*, 828 F.3d at 1231). People who want to donate their plasma for use in the production of medical treatments cannot do so on their own. They need assistance, which plasma donation centers offer in the form of trained personnel to operate specialized equipment that separates plasma from red blood cells, collects the plasma, and returns the red blood cells to the donor. The assistance that plasma donation centers provide benefits plasma donors by allowing them to donate plasma when they would not otherwise be able to do so. The procurement of plasma by plasma donation centers therefore falls squarely within the ordinary meaning of the word "service," and as a result, plasma donation centers are service establishments under the plain meaning of Title III.

Reinforcing that plasma donation centers provide a service under that word's "ordinary, contemporary, common meaning," *Sandifer*, 571 U.S. at 227, is the fact that Defendant describes plasma procurement as a "service." *See* CSL Plasma, www.cslplasma.com/careers/endless-careers-possibilities (CSL employees provide "customer service" to donors). Likewise, the law of Illinois expressly defines plasma procurement as a service. *See* 745 Ill. Compiled Stat. Ann. § 40/2 (stating that "procuring . . . plasma" is "the rendition of a service by every person, firm or corporation participating therein . . . .").

i. The Tenth Circuit and the Third Circuit Have Correctly Held that Plasma Donation Centers Are "Service Establishments."

The Tenth Circuit and the Third Circuit have both recognized that plasma donation centers are service establishments under the plain meaning of Title III. In *Levorsen v. Octapharma Plasma, Inc.*, the Tenth Circuit concluded that under the plain language of 42 U.S.C. § 12181(7)(F), a service establishment is an establishment that "assists or benefits someone or something or provides useful labor without producing a tangible good for a customer or client," and that plasma donation centers easily satisfy that definition by supplying the

equipment and personnel needed to enable people to donate plasma. 828 F.3d at 1231, 1234. Similarly, in *Matheis v. CSL Plasma, Inc.*, the Third Circuit concluded that plasma donation centers are service establishments because they "offer[] a service to the public, the extracting of plasma for money, with the plasma then used by the center in its business of supplying a vital product to healthcare providers." 936 F.3d at 178. Both courts based their determinations on the plain language of the statute. As the court stated in *Levorsen*, 828 F.3d at 1229, a plasma donation center "is a 'service establishment' for two exceedingly simple reasons: It's an establishment. And it provides a service. This straightforward conclusion is entirely consistent with the goal and purpose of Title III. Thus, we need not look beyond the plain language of § 12181(7)(F) to determine that a [plasma donation center] constitutes a public accommodation." *Accord Matheis*, 936 F.3d at 177-78.

ii. The Fifth Circuit Erred in Holding that Plasma Donation Centers Are Not "Service Establishments."

In *Silguero v. CSL Plasma, Inc.*, the Fifth Circuit held that plasma donation centers do not provide a "service" and are therefore not "service establishments" or public accommodations under Title III. 907 F.3d at 329-32. This interpretation of Title III was incorrect. The Fifth Circuit based its holding that plasma donation centers do not provide a "service" on three determinations. Each of these determinations was flawed, as explained below.

First, the Fifth Circuit found that members of the public who donate their plasma "receive no obvious 'benefit' or 'help' which would make the plasma collection center's act a 'service'" and concluded that "the individual performs a service for the establishment, not the other way around." *Id.* at 329. This conclusion was incorrect. Not only do plasma donation centers benefit donors by paying them money, but as discussed in section III.A above, plasma donation centers also provide assistance, in the form of trained personnel and specialized equipment, without

which donors would be unable to donate plasma. The Third Circuit recognized this in *Matheis*, finding that "no support exists for the Fifth Circuit's statement that donors 'do not benefit' from the act of donating . . . . [D]onors receive money, a clear benefit, to donate plasma." 936 F.3d at 177. Similarly, the Tenth Circuit in *Levorsen* concluded that plasma donation centers "assist or benefit those who wish to provide plasma for medical use . . . by supplying the trained personnel and medical equipment necessary to accomplish that goal." 828 F.3d at 1234.

Second, to interpret the meaning of the term "other service establishment" in 42 U.S.C. § 12181(7)(F), the Fifth Circuit applied the maxim of *ejusdem generis*, which holds that "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001). The Fifth Circuit opined that "[e]ach of the items on the list in 42 U.S.C. § 12181(7)(F) involves establishments acting in some way that clearly benefits the individual," whereas "plasma collection does not provide any detectable benefit for donors." *Silguero*, 907 F.3d at 330.

The Fifth Circuit should not have applied ejusdem generis to interpret the meaning of § 12181(7)(F). *Ejusdem generis* "comes into play only when there is some uncertainty as to the meaning of a particular clause in a statute," so its use is inapposite if the statutory text is clear. *United States v. Johnson*, 655 F.3d 594, 604 (7th Cir. 2011) (quoting *United States v. Turkette*, 452 U.S. 576, 581 (1981)). As explained in section III.A above, the word "service" is not ambiguous, and it plainly encompasses the assistance that plasma donation centers provide. *Ejusdem generis* is therefore inapplicable. *See Levorsen*, 828 F.3d at 1232 ("[W]e decline to apply *ejusdem generis*" because the meaning of each of the words in "service establishment" is clear).

Even if the maxim did apply, however, it would support a finding that plasma donation centers are service establishments. Like all the other entities listed in 42 U.S.C. § 12181(7)(F), plasma donation centers provide a benefit and assistance to members of the public.

The Fifth Circuit's final reason for holding that plasma donation centers do not provide a "service" was that plasma donation centers do not receive payment from members of the public for services rendered, as is typical in most service establishments; rather, the centers pay the donors. *Silguero*, 907 F.3d at 330. Based on this feature, the Fifth Circuit deemed the relationship between plasma donation centers and donors "more akin to employment or contract work, not the provision of a 'service' to a customer." *Id.* The Fifth Circuit stated that while the direction in which compensation flows is not dispositive, it is "highly relevant in determining whether an establishment provides a 'service' to a customer . . . ." *Id.* at 331-32.

This determination, too, was mistaken. Far from being a "highly relevant" factor, the direction in which compensation flows has no bearing on whether an establishment provides a "service." Most service establishments receive compensation from their customers, but some, such as banks, recycling centers, pawnshops, and consignment shops, compensate their customers. *See* 42 U.S.C. § 12181(7)(F) (listing banks as one of the illustrative examples of service establishments); *Estrada v. S. St. Prop., LLC*, 2017 WL 3461290, at *3 (C.D. Cal. Aug. 11, 2017) (holding that a recycling center is a service establishment under Title III). What all the examples of service establishments listed in 42 U.S.C. § 12181(7)(F) have in common is not the direction in which the compensation flows, but the fact that each establishment assists members of the public by offering the benefit of expertise or specialized equipment or both. Plasma donation centers fall within this definition; the fact that they compensate donors is immaterial. Limiting the definition of service establishments to establishments that receive compensation

from their customers would be a narrower interpretation than the statutory text permits. *See Matheis*, 936 F.3d at 177 ("[A]ny emphasis on the direction of monetary compensation is, to us, unhelpful."); *Levorsen*, 828 F.3d at 1233-34 ("[S]ervice establishments are establishments that provide a service, regardless of whether they provide or accept compensation as part of that process."). The narrow interpretation of 42 U.S.C. § 12181(7)(F) espoused in *Silguero* would also conflict with the ADA's expansive purpose, as discussed in section III.B below.

For all these reasons, the Court should not follow the Fifth Circuit's holding in *Silguero*. It should instead follow the Third Circuit in *Matheis* and the Tenth Circuit in *Levorsen* and hold that plasma donation centers are service establishments under the plain language of 42 U.S.C. § 12181(7)(F) and are therefore public accommodations under Title III of the ADA.

B. Construing "Service Establishments" to Include Plasma Donation Centers Is Consistent with the ADA's Expansive Purpose.

Although the Court need not look beyond the statutory text to determine that plasma donation centers are service establishments under 42 U.S.C. § 12181(7)(F), the legislative history of the ADA also supports this interpretation. The legislative history makes clear that Congress intended for courts to construe the categories of public accommodations listed in Title III "liberally to afford people with disabilities equal access to the wide variety of establishments" available to people without disabilities. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 676-77 (2001). And as the Tenth Circuit noted in *Levorsen*, "Congress changed the language in § 12181(7)(F) from 'other *similar* service establishments' to 'other service establishments,' presumably to make clear that a particular business need *not* be similar to the enumerated examples to constitute a service establishment." 828 F.3d at 1233. Given the ADA's expansive purpose, construing "service establishments" to include plasma donation centers would be the correct interpretation of 42 U.S.C § 12181(7)(F) even if the meaning of the word "service" were ambiguous.

IV. CONCLUSION

The United States respectfully requests that the Court consider this Statement of Interest in this litigation.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2021, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record.

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