IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IVY BLOUNT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02-2813-MaV
	)	
D. CANALE BEVERAGES, INC.,	)	
CHRIS CANALE, Owner,	)	
ROGER TAYLOR, Supervisor,	)	
RICHARD CARUSO, District	)	
Manager, TOM WOODS, Vice	)	
President, and D. CANALE,	)	
	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO DISMISS OR STRIKE
PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

Before the court is a motion by the defendants, D. Canale Beverages, Inc., et al., to dismiss portions of the plaintiff's first amended complaint for failure to state a claim upon which relief may be granted and/or to strike portions of the first amended complaint. The parties have consented to trial before the United States Magistrate Judge. For the following reasons, the defendants' motion is granted in part and denied in part.

At the time of the incidents in the complaint, the plaintiff Ivy Blount, a black male, worked for D. Canale Beverages as a delivery driver. D. Canale Beverages is a private corporation that

manufactures and markets alcoholic beverages in Memphis, Tennessee. Blount alleges that between March 19, 2001 and July 26, 2002, he was subjected to a number of racial discriminatory actions by the defendants. He alleges that defendant Roger Taylor repeatedly called him a "house nigga" and a "field nigga,"; that the defendants questioned his beverage delivery volume and refused to provide relief labor on his delivery routes; that the defendants required immediate reimbursement for payroll over-payments that they did not require from other employees; that the defendants refused to honor Blount's return-to-work medical authorizations and instead kept Blount on suspension; that defendants interfered with payments due from Canale Beverage's disability insurance carrier; and that the defendants suspended Blount from work on August 22, 2001, then terminated his employment effective July 26, 2002, both allegedly in retaliation for filing charges of discrimination. Blount also alleges that in August of 2001 he informed the defendants he was "stressed out," and shortly thereafter was hospitalized at Charter Lakeside Behavioral Health and diagnosed with major depression.

On October 23, 2002, Blount filed this action pro se alleging racial and religious discrimination by defendant D. Canale Beverage, Inc., and by Chris Canale, D. Canale, Roger Taylor, Richard Caruso, and Tom Woods, as individuals and in their official

roles as D. Canale Beverage supervisors or corporate officers.

On October 31, 2002, the court *sua sponte* dismissed Blount's claims to the extent that Blount sought relief under the Fair Labor Standards Act (FLSA). Blount had retained counsel as of February 28, 2003 and subsequently filed his First Amended Complaint on May 8, 2003, pursuant to a modified Rule 16(b) scheduling order. The First Amended Complaint re-stated the pro se complaint in its entirety, added a claim for religious discrimination under Title VII, and added factual allegations that D. Canale Beverages engaged in a practice known as "redlining." In addition to these claims, the First Amended Complaint alleged unlawful retaliation for assertion of rights and conspiracy, defamation, equal rights violations, and unlawful employment practices in violation of the Equal Protection Act (EPA), the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), and 42 U.S.C. §§ 1981, 1986, and 2000e et seq.

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the defendants now seek to dismiss the claims discussed below for failure to state claims upon which relief can be granted and to strike certain of Blount's factual allegations on grounds of immateriality and redundancy pursuant to Federal Rule of Civil Procedure 12(f). Blount has not opposed the motion, and the time

for responding is now expired.[1]

When considering a motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss for failure to state a claim upon which relief can be granted, the court must assume that all of the well-pleaded factual allegations in the complaint are true and must construe those facts in a light most favorable to the plaintiff. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). A court should grant the motion to dismiss "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* at 12; *see also Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 996 (6th Cir. 1994); *Achterhof v. Selvaggio*, 886 F.2d 826, 831 (6th Cir. 1989) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

A. <u>FLSA Claims</u>

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[1] Pursuant to Local Rule 7.2(a)(2), responses to motions in civil cases, unless the motion is pursuant to Federal Rules of Civil Procedure 12(b) or 56, are to be filed within fifteen days after service of the motion. In the case of a motion to dismiss or a motion for summary judgment, a response shall be filed within 30 days after service. Rule 7.2(a)(2) further provides that "[f]ailure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion." Because the motion before the court seeks in part dismissal of claims, Blount's failure to respond is not in and of itself grounds for granting the motion. *See Stough v. Mayville Community Schs.*, 138 F.3d 612, 614 (6th Cir. 1998) (holding that district court abused its discretion by dismissing claim pursuant to local rule for failure to respond to motion absent specific findings as to bad faith, prejudice, or prior notice of possible dismissal).

The defendants first seek to strike or dismiss Blount's FLSA claims on grounds that they already were dismissed on October 31, 2002 in the court's sua sponte order. A plaintiff may not, in an amended complaint, re-assert claims that were previously dismissed. *In re Sundown, Inc.*, 144 F. Supp. 2d 935, 939 (S.D. Ohio 2001); *Scott v. Kelly*, 107 F. Supp. 2d 706m 708 (E.D. Va. 2000). Accordingly, Blount's claims arising under the FLSA are not subject to review and remain dismissed.

B. Claims Arising Under 42 U.S.C. §§ 1981, 1985, and 1986

The defendants argue that Blount's claims arising under 42 U.S.C. §§ 1981, 1985 and 1986 should be dismissed because Blount has failed to allege that the defendants acted under color of state law. In pertinent part, § 1985 provides as follows:

> If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . .in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3). This statute does not, on its face, require state action. It applies to "any person," and accordingly a lack of

state action is not grounds to dismiss.

The defendants next argue that Blount has not specifically alleged a conspiracy. (Defs.' Mem. of Law in Supp. of their Mot. to Dismiss and/or to Strike Portions of Pl.'s First Amended Compl. at 7.) While this is true, Blount has alleged actions by two or more Canale Beverage employees, officers, or owners. He also has alleged that he was treated differently from white employees. (Pl.'s First Amended Compl. at ¶¶ 13, 18.) In addition, Blount alleges that during his employment he was hospitalized at a mental health care facility and diagnosed with depression, (*id.* ¶27-28), and that the defendants' acts caused his illness, (*id.* at ¶ 32.) If all allegations are taken as true and construed in a light most favorable to Blount, he could potentially prove a § 1985 claim consistent with his allegations. Accordingly, the § 1985 claim should not be dismissed outright as to defendants acting in their individual capacities.

To the extent that Blount seeks relief under 42 U.S.C. § 1985 for discrimination based on religion, however, the cause of action is improper as a matter of law. 42 U.S.C. § 1985(3) may not be used to vindicate claims for which Title VII provides relief. *Day v. Wayne County Bd. of Auditors*, 749 F.2d 1199, 1203 (6th Cir. 1984) (quoting *Great American Federal Savings & Loan Association v. Novotny*, 442 U.S. 366, 375-76 (1979).

In addition, Blount's ¶ 1985 claim should be dismissed as to the corporation D. Canale Beverages, Inc. The Sixth Circuit has recognized an intra-corporate conspiracy exception to § 1985 claims. "A corporation cannot conspire with itself . . . and it is the general rule that the acts of the agent are the acts of the corporation." *Doherty v. American Motors Corp.*, 728 F.2d 334, 339 (6th Cir. 1984) (quoting Nelson Radio & Supply Co. v. Motorola, Inc., 200 F.2d 911 (5th Cir. 1952)). *Accord Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Ed.*, 926 F.2d 505, 509 (6th Cir. 1991). Accordingly, Blount's § 1985 claims are dismissed insofar as any of them implicates as a co-conspirator D. Canale Beverages, Inc. as a corporate entity.

42 U.S.C. § 1986 derives from § 1985, providing a remedy to persons injured by neglect or refusal of persons to prevent wrongs specified in § 1985 when they have the power to do so.[2] Blount

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[2] In pertinent part, 42 U.S.C. § 1986 provides as follows:

> Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . . But no action under the

might have a cognizable claim under § 1985, and he also has alleged that Taylor's supervisory colleague, Derek Misten, who also was Blount's supervisor, overhead at least one of the remarks. (Pl.'s First Amended Compl. at ¶¶ 9-12.) Blount has not alleged that Misten or another defendant had the power to correct the alleged wrongs, but such a showing would not be inconsistent with his allegations. Accordingly, the § 1986 conspiracy claim should not be dismissed as to defendants acting in their individual capacities. However, to the extent that any of Blount's § 1986 claims implicate the corporate entity D. Canale Beverages, Inc., they are dismissed because no § 1985 claim can stand against D. Canale Beverages.

Finally, the defendants argue that Blount's § 1981 claims should be dismissed for two reasons: first, that they are time-barred, and second, that Blount has failed to state a claim upon which relief can be granted because he was an at-will employee.

> provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1986. However, no claim for relief under this section will lie unless valid claim has first been established under § 1985. *Johnston v. National Broadcasting Co.*, 356 F. Supp 904, (E.D.N.Y. 1973); *Martin Hodas, East Coast Cinematics, Inc. v. Lindsay*, 431 F. Supp 637, (S.D.N.Y. 1977); *Boling v. National Zinc Co.,* 435 F. Supp 18 (N.D. Okla. 1976).

Because § 1981 does not have a stated statute of limitations, federal courts apply the applicable state's personal injury statute of limitations. *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660-62 (1987). The applicable statute of limitations in Tennessee is one year, and it is not tolled by the filing of an EEOC charge. *See* TENN. CODE ANN. § 28-3-104(a)(3) (setting the applicable statue of limitations); *Wade v. Knoxville Util. Bd.*, 259 F.3d 452, 464 (6th Cir. 2001) (applying the Tennessee statute of limitations and finding no tolling). The defendants argue that, because Blount's pro se complaint was filed on October 23, 2002, he is not entitled to relief based on allegedly discriminatory acts that occurred prior to October 23, 2001, including those that occurred while he was on suspension that began August 22, 2001.

The resolution of this issue depends on whether Blount can establish a continuing violation. The Sixth Circuit applies to § 1981 racial discrimination claims the same standards of review used for Title VII racial discrimination claims. *Jackson v. Quanex Corp.*, 191 F.3d 647, 658 (6th Cir. 1999). Accordingly, the Sixth Circuit recognizes two categories of continuing violations: (1) the "serial" violation, which involves repeated discriminatory acts, and (2) the "long-standing and demonstrable policy" violation, which involves intentional discrimination against a protected class. *See, e.g., EEOC v. Penton Industrial Pub. Co., Inc.*, 851

F.2d 835, 837-39 (6th Cir. 1988); *Alexander v. Local 496,* 177 F.3d 394, 408-409 (6th Cir. 1999). Although a "long standing and demonstrable policy" is often created or evinced by the employer's repeated discriminatory acts, *see, e.g., Alexander*, 177 F.3d at 408-409 (finding both types of continuing violation when a union consistently failed to inform black members of continued work eligibility guidelines but consistently informed white members of those guidelines), a "serial" violation affects only one person, while a "policy" violation reflects disparate treatment of the protected class as a whole. *See, e.g., Penton Industrial*, 851 F.2d at 838-39 (rejecting, in a sex discrimination case, a "policy" violation theory for a single incident of disparate pay); *Janikoski v. Bendix Corp.*, 823 F.2d 945 (6th Cir. 1986) (rejecting, in an ADEA case, a "policy" violation theory when plaintiff failed to allege an "over-arching policy" of age discrimination). *See also Tenenbaum v. Caldera*, 2002 U.S. App. LEXIS 18155 (6th Cir. 2002) (rejecting, in a Title VII religious discrimination case, a "policy" violation theory for lack of facts supporting "similar discrimination against other American Jews" or "class-wide discrimination"); *Foster v. Overnite Transp. Co.*, 2003 U.S. Dist. LEXIS 1971 (W.D. Tenn. 2003) (rejecting, in a Title VII gender discrimination case, a "policy" violation theory when plaintiff failed to allege "a general failure to promote females as a

class").

Blount's complaint in this case does not support a "policy" violation. Although Blount alleges that he was treated differently from white drivers, he does not allege that such discriminatory treatment extended to other black drivers as a class, nor does he set forth any instances of conduct that could be construed as an over-arching policy disfavoring blacks as a class. Accordingly, to the extent that Blount seeks relief for a policy-based continuing violation, his claims are properly dismissed against all defendants.

The treatment of the second type of continuing violation, the "serial violation," is governed by *National Railroad Passenger Corp. [AMTRAK] v. Morgan*, 536 U.S. 101 (2002). Prior to *Morgan*, courts looked to underlying state law to determine whether serial violations constituted a continuing violation for purposes of a § 1981 action.[3] *Morgan*, a Title VII case, held that each "discrete act" triggered a new statute of limitations and rejected the proposition that, in the aggregate, such acts established a

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[3] *See, e.g., Bell v. Chesapeake & O. R. Co.*, 929 F.2d 220, 223 (6th Cir. 1991) (applying, in a case alleging violations of the Michigan Elliott-Larsen human rights act, the continuing violation doctrine as adopted by Michigan Supreme Court); *Jackson v. Quanex Corp.*, 191 F.3d 647, 667-68, n. 7 (6th Cir. 1999) (following *Bell* to apply Michigan's theory of continuing violation to a claim that asserted both a § 1981 claim and a violation of the Michigan Human Rights Act.)

continuing violation. The Sixth Circuit has definitively extended this rule to Section § 1983 claims, *Sharpe v. Cureton*, 319 F.3d 259, 267 (6th Cir. 2003), and there is every reason to believe it similarly applies to § 1981 claims, *see id.* at n.6 (noting an unpublished case, *Kinley v. Norfolk Southern Railway Co.*, 230 F. Supp. 2d 770, 2002 WL 31499269 (E.D. Ky. 2002), which extended *Morgan* to § 1981 claims).

Under *Morgan*, claims in this case arising from acts done before October 23, 2001, including Blount's suspension on August 22, 2001, are time-barred because Blount's original complaint was not filed until October 23, 2002. Only four acts alleged in the complaint potentially occurred after October 23, 2001: 1) a failure to honor return-to-work medical authorizations issued January 1 and 2, 2002 (First Amended Compl. at ¶ 23); 2) termination of Blount's employment on January 26, 2002, (*id.* at ¶ 26); 3) an instruction to the Workers' Compensation bureau not to honor Blount's claim, (*id.* at ¶ 21); and 4) interference with timely payments from the disability insurance carrier, (*id.* at ¶ 22).

The disputes over return-to-work authorizations arose inside the one-year statute of limitations. The defendants argue that they do not give rise to a claim because Blount still was on suspension when they occurred. (Defs.' Mem. of Law in Supp. of their Mot. to Dismiss and/or to Strike Portions of Pl.'s First

Amended Compl. at 9, n. 1.) Blount does not indicate in his complaint why he was suspended from work. Nor, however, does he allege or set forth any facts tending to prove that the defendants' refusal to return him to work was based on racial discrimination or that the defendants lacked a factual basis for declining to re-instate him. Accordingly, Blount has not alleged a claim upon which relief may be granted. *See Wade v. Knoxville Utils. Bd.*, 259 F.3d 452, 462-463, n.6 (6th Cir. 2001) (affirming summary judgment dismissal of plaintiff's claim when plaintiff failed to show that failure to re-instate him after a medical suspension was a pretext for racial discrimination).

The second act, the termination of employment, also occurred within the one-year limitations period. The defendants argue that Blount, at-will employee, he had no contract with respect to the duration of his employment that could be infringed in violation of ¶ 1981. The defendants, however, cite no controlling authority in support of this proposition. Although the Sixth Circuit has not yet spoken on whether § 1981 supports an at-will employee's cause of action, the majority of circuits, as well as district courts in the Sixth Circuit, recently have held that it may. *See, e.g., Henry v. Trammell Crow SE, Inc.*, 34 F. Supp. 2d 629, 634-35 (W.D. Tenn. 1998); *Williams v. United Dairy Farmers*, 20 F. Supp. 2d 1193, 1202 (S.D. Ohio 1998); *Turner v. Ark. Ins. Dep't*, 297 F.3d 751, 757-58

(8th Cir. 2002) (permitting the claim and discussing other circuits' holdings). Accordingly, dismissal on this basis alone is unjustified.

It is not clear when the third and fourth acts occurred. It is conceivable that, consistent with his allegations, Blount could show that they occurred within the limitations period. Accordingly, dismissal is inappropriate at this time.

C. Defamation Claim

The defendants argue that Blount has not indicated whether he bases his defamation claim on slander or libel, but in any case insist that Blount's defamation claim is time-barred. Under Tennessee law, to establish a cause of action for defamation, the plaintiff must plead and prove that: (1) a party published a statement; (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement; or (4) with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Mem. Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999). In Tennessee, "[a]ctions for slanderous words spoken shall be commenced within six (6) months after the words are uttered." T.C.A. 28-3-103. Actions for libel may be brought up to one year after the cause of action accrues. T.C.A. 28-3-104(a)(1). Blount has not alleged that any defendant published a spoken or written statements of a defamatory nature

within these statutes of limitations. Accordingly, dismissal of the defamation claims is appropriate as to all defendants.

D. Religious Discrimination under Title VII

To succeed on a cause of action brought under Title VII of the Civil Rights Act of 1964, a plaintiff must first file a charge with the Equal Employment Opportunity Commission that alleges that an employer has engaged in an unlawful employment practice. The purpose for requiring potential plaintiffs to file charges with the EEOC prior to bringing a civil action is to "trigger the investigatory and conciliatory procedures of the EEOC so that the Commission may first attempt to obtain voluntary compliance with the law." *Davis v. Sodexho, Cumberland College Cafeteria*, 157 F.3d 460, 463 (6th Cir. 1998). Thus, the procedures serve to "notify potential defendants of the nature of plaintiffs' claims and provide them the opportunity to settle the claims before the EEOC rather than litigate them." *Id.* Because the purpose of the statute is to encourage conciliation and voluntary remedies by employers, a claim filed in a federal court alleging a violation of Title VII is "limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination." *EEOC v. Bailey Co., Inc.,* 563 F.2d 439, 446 (6th Cir. 1977) (quoting *Tipler v. E. I. duPont deNemours & Co.*, 443 F.2d 125, 131 (6th Cir. 1971)). Courts construe this requirement liberally,

because most plaintiffs are laypersons who filed their EEOC charges without the benefit of counsel. *See id.* at 446-47 (quoting *McBride v. Delta Air Lines, Inc.*, 551 F.2d 113, 115 (6th Cir. 1977)). Nevertheless, there must be *something* in the EEOC charge that would give the EEOC sufficient notice that it should "investigate or facilitate conciliation with [the] employer on that ground." *Davis*, 157 F.3d at 464.

In the present case, there was nothing in Blount's EEOC charges to notify the EEOC that it should investigate religious discrimination. Blount filed his first EEOC charge on August 22, 2001 and his second on February 11, 2002. (See Exhibits to Complaint filed Oct. 23, 2002.) Plaintiff checked boxes for "race" and "retaliation" on the standard form EEOC charges, but he did not check the box for "religion" as a basis of discrimination, nor did he make any reference to religion in the narrative portion of the form EEOC charges. Nothing on the present record indicates that Blount attempted, in the EEOC charge or otherwise, to alert the EEOC that he might have suffered employment discrimination as a result of his religion. Accordingly, the present allegation of religious discrimination cannot, under any view of the evidence, establish a complaint upon which relief would be granted, and that portion of Blount's complaint must be dismissed. Having found dismissal appropriate on these grounds, the court does not reach

the issue of whether these claims are also time-barred.

E. Individual Liability under Title VII and the ADA

Blount has alleged that acts by defendants Chris Canale, Tom Wood, Richard Caruso, and Roger Taylor, in their individual capacities, violated Title VII and the ADA. (First Amended Compl. at Introduction). The defendants, relying on *Wathen v. General Electric Co.*, 115 F.3d 400, 405, n. 6 (6th Cir. 1997), argue that individual employee/supervisor acting in his individual capacity is not an "employer" within the meaning of Title VII and the ADA and, accordingly, cannot be held personally liable under these Acts for discrimination. While this is correct, the Sixth Circuit recently clarified that an "employer" for purposes of civil rights statues may be anyone who 1) controls "job performance and employment opportunities of the aggrieved individual," 2) is an agent to whom the employer delegated employment decisions, or 3) "significantly affects access of any individual to employment opportunities." *Satterfield v. Tennessee*, 295 F.3d 611, 617 (6th Cir. 2002) (internal quotations omitted). The third theory "turn[s] on the defendants' control over the plaintiffs' employment with third parties." *Id.* at n. 6 (citing *Darks v. City of Cincinnati*, 745 F.2d 1040, 1042 (6th Cir. 2004). Blount has not pleaded any facts imputing this type of control to the defendants.

Blount has, however, pleaded facts sufficient to support

claims that three of the four individually named defendants are "employers" under the first or second theories of statutory interpretation. Blount has alleged that Chris Canale is the "owner" of D. Canale Beverages, Inc. and responsible for its daily operations (First Amended Compl. at ¶ 6); that Tom Woods was the company's Vice President and personally made decisions relating to Blount's disability and workers' compensation payments (*Id.* at ¶ 21-22); that Richard Caruso was a District Manager responsible for Canale Beverage decisionmaking, and that Caruso stated he would cut short [Blount's] delivery route (*Id.* at ¶¶ 7, 14). Roger Taylor is identified as a supervisor, (*Id.* at ¶ 6), and Blount alleges that Taylor had influence over the decision to terminate Blount's employment, (First Amended Compl. at ¶ 17). Taking all Blount's allegations as true, it appears Blount could prove, consistent with his allegations, that the named defendants were "employers" within the first and possibly the second Sixth Circuit interpretations of the term. Accordingly, the claims against them should not be dismissed under the standards set by Rule 12(b)(6).

F. Motion to Strike

The defendants next seek to strike from Blount's complaint the following: 1) allegations that any defendant acted under color of state law; 2) factual allegations concerning "redlining"; 3) jurisdictional claims based on the First and Fourteenth Amendments;

and 4) jurisdictional claims based upon 28 U.S.C. § 1345. (Defs.' Mem. of Law in Supp. of their Mot. to Dismiss and/or to Strike Portions of Pl.'s First Amended Compl. at 3-4.)

Federal Rule of Civil Procedure Rule 12(f) authorizes a court to strike certain specified types of matters "from any pleading":

> Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

FED. R. CIV. P. 12(f).

As to the jurisdictional claims and allegations of state action, Blount has alleged no fact indicating state action and has in fact alleged that D. Canale is a for-profit corporation. For these reasons, any allegations that the defendants are state actors and jurisdictional claims invoking the First and Fourteenth Amendments are stricken. In addition, there can be no jurisdiction under 28 U.S.C. § 1345 because the United States is not the plaintiff.[4] This jurisdictional claim also is stricken.

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[4] 18 U.S.C. § 1345 provides as follows:

> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

As to the allegations of "redlining," the defendants argue that Blount has no standing to bring such a claim; that the claim is vague and ambiguous; and that it asserts no legal theory upon which recovery may be based. The court does not reach the merits of these arguments, however, because the court finds the defendants have not shown how the "redlining" allegations are "redundant, immaterial, impertinent, or scandalous" as required by Rule 12(f). Blount has set forth alleged practices and also alleged that the practices violated state and federal law. If indeed the claims are so ambiguous that their substance cannot be ascertained by the defense, the proper procedural vehicle is a motion for more definite statement. Accordingly, the motion to strike the "redlining" allegations is denied.

CONCLUSION

For the foregoing reasons:

Claims arising under 42 U.S.C. §§ 1985 or 1986 are dismissed in their entirety as to D. Canale Beverage, Inc. as a corporate entity. They also are dismissed as to the other defendants, but only insofar as they are based on religious discrimination.

Insofar as Blount's § 1981 claims allege a policy-based continuing violation, they are dismissed against all defendants for

failure to state a claim upon which relief can be granted. Insofar as Blount alleges serial violations, recovery is barred for all the defendants' actions occurring prior to October 23, 2001, and those claims are dismissed. Claims arising from the termination of Blount's employment on January 26, 2002; any instruction to the Workers' Compensation bureau not to honor Blount's claims, or interference with timely payments from the disability insurance carrier, however, remain viable.

Blount's defamation claims are dismissed as to all defendants, because Blount has not alleged publication of any defamatory statement within the applicable statutes of limitations for either slander or libel.

Blount's Title VII and ADA claims against Canale, Wood, Caruso, and Taylor in their individual capacities remain viable, because Blount's allegations, if true, could allow a reasonable factfinder to determine that defendants were "employers" for purposes of these statutory schemes.

Blount's claims for religious discrimination arising under Title VII are dismissed for failure to exhaust administrative remedies.

Allegations that the defendants are state actors and jurisdictional claims invoking the First and Fourteenth Amendments are stricken, as are allegations invoking jurisdiction pursuant to

28 U.S.C. § 1345. As to the "redlining" allegations, however, the defendants' motion to strike is denied.