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

SYMANTHA REED, CHARLES GOETZ, JAMES SPAULDING, GARY CRAWFORD WENDY WHARTON, and MICHELLE WHITEHEAD,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 1:21-cv-01155-STA-jay
TYSON FOODS, INC.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S RENEWED MOTION TO DISMISS PLAINTIFFS' AMENDED VERIFIED COMPLAINT

Defendant Tyson Foods, Inc. ("Tyson") submits this Memorandum of Law in Support of Defendant's Renewed Motion to Dismiss Plaintiffs' Amended Verified Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP") and Local Rules 7.2 and 12.1.

INTRODUCTION

Plaintiffs are current and former Tyson team members who claim Tyson violated various state and federal laws by requiring its workforce to receive the Covid 19 vaccination as a condition of continued employment. On December 9, 2021, Defendant moved to dismiss Plaintiffs' Amended Verified Complaint (D.E. 27), which the Court granted in part and denied in part on June 14, 2022 ("Order") (D.E. 38). The Court denied Defendant's Motion to Dismiss without prejudice as to count four (Tennessee Human Rights Act), Tenn. Code Ann. § 4–21–101 *et seq.;* count seven, (Tennessee Disability Act), Tenn. Code Ann. § 8–50–103 *et seq.*; and count eleven, Tenn. Code Ann. § 14-1-101 *et seq. Id.* at pp. 19 fn. 11, 26.

Defendant renews its motion to dismiss counts four, seven, and eleven. Plaintiffs have not alleged a cause of action under the Tennessee Human Rights Act ("THRA") for religious discrimination because they admit Tyson treated them the same as other employees, and there is no duty to accommodate their religious beliefs. Plaintiffs similarly have failed to allege a cause of action under the Tennessee Disability Act ("TDA") because Tyson did not discriminate against them because of an actual or perceived disability, and there is no duty to accommodate an employee's disability. Plaintiffs' claim under Tenn. Code Ann. § 14-1-101 fails because it does not apply to Tyson.

Additionally, all three of Plaintiffs' state law counts are preempted by President Trump's April 28, 2020, Executive Order, the Federal Meat Inspection Act ("FMIA"), and the Poultry Products Inspection Act ("PPIA").

For the reasons stated above and more fully set forth below, the Court should dismiss with prejudice the three remaining counts and Plaintiffs' Amended Complaint in its entirety.

LEGAL ANALYSIS

I. Legal Standard Governing Motions to Dismiss.

Rule 12(b)(6) provides for dismissal of a complaint based on the plaintiff's "failure to state a claim upon which relief can be granted." FRCP 12(b)(6). When considering a Rule 12(b)(6) motion, the Court must treat well-pleaded allegations of the pleadings as true and construe allegations in the light most favorable to the non-moving party. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Saylor v. Parker Seal Co.*, 975 F.2d 252, 254 (6th Cir. 1992). However, legal conclusions or unwarranted factual inferences need not be treated as true. *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987). "To avoid dismissal under Rule 12(b)(6), a complaint must contain either direct or inferential allegations with respect to all material elements

of the claim." *Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 902 (6th Cir. 2003). The factual allegations contained in the complaint must be enough to make a right to relief more than speculative. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (citing *Twombly*, 550 U.S. at 555 n.3, 558) ("The factual allegations, assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action; they must show entitlement to relief.").

Rules 8(a) and 12(b)(6) work together. Rule 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FRCP 8(a). Although this standard does not require "detailed factual allegations," it does require more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009); *Twombly*, 550 U.S. at 555*; see also Reilly v. Vadlamudi*, 680 F.3d 617, 622 (6th Cir. 2012) (quoting *Twombly*, 550 U.S. at 555). This requires the plaintiff to plead more than "a formulaic recitation" of the elements of their causes of action, more than simple legal conclusions which are not entitled to an assumption of truth, and more than the possibility the defendant is liable. *Iqbal*, 556 U.S. at 678–80. Rather, a plaintiff's complaint must contain well-pleaded factual allegations that move his claim "across the line from conceivable to plausible." *Id.* (quoting *Twombly*, 550 U.S. at 570).

All of Plaintiffs' counts fall short of these standards for the reasons set forth below. Plaintiffs' factual assertions do not demonstrate they are entitled to relief against Defendant. The Court should dismiss Plaintiffs' Amended Complaint in its entirety.

II. Plaintiffs Fail to State a Claim Under the THRA Because Defendant Has Not Discriminated Against Them Because of Their Religious Beliefs and Defendant Has No Duty to Accommodate Their Religious Beliefs (Count Four).

A. Plaintiffs were treated the same as other employees.

Under the THRA it is a "discriminatory practice for an employer to:"

> (1) Fail or refuse to hire or discharge any person or otherwise to discriminate against an individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, creed, color, religion, sex, age or national origin; or
>
> (2) Limit, segregate or classify an employee or applicants for employment in any way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee, because of race, creed, color, religion, sex, age or national origin.

Tenn. Code Ann. §4-21-401(a)(1)&(2).

By definition, religious discrimination cannot occur when all employees are treated equally. *Id. Cf Phillips v. Interstate Hotels Corporation*, 974 S.W.2d 680 (Tenn. 1998)(in public accommodation case under the THRA, Tennessee Supreme Court found no discrimination on the basis of race where "all patrons were affected equally by the music selection policy, as every patron, regardless of race, was subjected to the same music selections.").

Therefore, Plaintiffs' claims of religious discrimination under the THRA should be dismissed.

B. No Duty to Accommodate.

The THRA does not require an employer to accommodate an employee's religious beliefs. Unlike Title VII, which imposes an express accommodation requirement within its definition of

religion,[1] the THRA does not define "religion", nor does it include any reference to accommodation of religious practices that conflict with an employee's job functions or an employer's policy. Tenn. Code Ann. §§ 4-21-101-1004.[2]

Where the language of the THRA differs from Title VII, Tennessee courts must conduct their own analysis on whether to follow federal law when interpreting the THRA. *See Booker v. The Boeing Co.*, 188 S.W.3d 639, 647 (Tenn. 2006) ("[W]e will not apply the reasoning and conclusions of federal civil rights decisions where doing so would conflict with the THRA."). Courts should also "resist reading words or elements into a statute that do not appear on its face." *Bates v. United States,* 522 U.S. 23, 29 (1997). Consequently, although the THRA includes similar protections as Title VII, it does not impose on any employer the duty to accommodate an employee's religious beliefs and practices.

Furthermore, no state or federal court in Tennessee have held that an employer's alleged failure to accommodate an employee's religious beliefs and practices under the THRA must be analyzed under the same standards as Title VII. Waverly D. Crenshaw, Jr., and Brian A. Pierce, 1 Belmont L. Rev. 1, 9 (2014) (citing *Dobbs-Weinstein v. Vanderbilt Univ.*, 1 F. Supp. 2d 783, 791 (M.D. Tenn. 1998), *aff'd*, 185 F.3d 542 (6th Cir. 1999)). The conclusion that the THRA does not impose a duty to accommodate an employee's religious beliefs is consistent with the well-established canon of statutory construction that a legislature purposefully chooses its words and

[1] The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. 42 U.S.C. § 2000e(j).

[2] The THRA not only does not contain an accommodation requirement, but its definition of "discriminatory practices" prohibits preferences in treatment based on a protected trait including religion: "(4) 'Discriminatory practices' means any direct or indirect act or practice of exclusion . . . or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, creed, color, religion, sex, age or national origin." Tenn. Code Ann. §4-21-102(4).

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