UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

THE UNITED STATES OF AMERICA, Plaintiff, v. DREW B. MORVANT, D.D.S., and DREW B. MORVANT, A PROFESSIONAL DENTAL CORPORATION, Defendants.	)	CIVIL ACTION No. 93-3251 Section K (1)

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS/MOTION TO STRIKE

I. INTRODUCTION

This is an action brought pursuant to title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-89. The United States has alleged that Drew B. Morvant, D.D.S., violated and continues to violate the ADA by refusing to treat HIV-positive persons.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant has moved this Court to dismiss Plaintiff's claims on the grounds that the United States has failed to state a claim upon which relief can be granted. Defendant argues that Dr. Morvant, who practices dentistry as a professional dental corporation, cannot be sued in his individual capacity. The United States avers that Dr. Morvant is not shielded from personal liability, and that Dr. Morvant, in his individual capacity, as well as the corporate entity under which he practices, may be sued for violations of the ADA.

Defendant also has moved this Court, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, for an order striking from Plaintiff's Prayer for Relief both the demand for monetary damages to Ismael Pena and the demand for monetary damages to "other persons aggrieved." However, neither demand contains any "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Moreover, both are cognizable requests under the ADA.

Accordingly, the government respectfully requests that Defendant's Motion to Dismiss/Motion to Strike be denied.

II. ARGUMENT

A. THE UNITED STATES HAS STATED A CLAIM UPON WHICH RELIEF CAN BE GRANTED

1. Dr. Morvant May be Sued in His Individual Capacity

Defendant argues that "[a]t all times relevant to this action, Dr. Morvant practiced as a professional dental corporation, and is thus shielded from individual liability . . ." Defendant's Memorandum in Support of Motion to Dismiss ("Defendant's Memorandum") at 2. There simply is no basis for this conclusion. Under the ADA, Defendant may not be shielded from personal liability for his own discriminatory actions. Moreover, Dr. Morvant may not be shielded from personal liability for his participation in the actions of his office that violated the ADA.

a. Dr. Morvant may be sued in his individual capacity under the ADA

Defendant's assertion that "a claim for damages allegedly arising out of actions taken by or on behalf of [the] professional dental corporation may not be imputed to him personally" is erroneous. See Defendant's Memorandum at 4. Title III of the ADA prohibits discrimination on the basis of disability by any "person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a).[1] Dr. Morvant, the owner, president, and sole director of Drew B. Morvant, A Professional Dental Corporation, owns and operates his dental practice.[2] Accordingly, Dr. Morvant is a person who owns and operates a place of public accommodation (see 28 U.S.C. §12181(7) (professional office of a health care provider is a public accommodation)) and may be held personally liable for his violations of the ADA.

Indeed, in the first case to consider this issue under the ADA, the court found that the owner of a corporation could be held personally liable for her own discriminatory actions and those that she authorized. EEOC v. AIC Security Investigations,

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[1] The Department of Justice's regulation implementing title III, 28 C.F.R. pt. 36, proscribes discrimination on the basis of disability by "any private entity who owns, leases (or leases to), or operates a place of public accommodation." Id. at § 36.201(a) (emphasis added). "Private entity" is defined as any "person or entity other than a public entity." Id. at § 36.104.

[2] See Articles of Incorporation and 1993 Annual Report of Drew B. Morvant, A Professional Dental Corporation, attached hereto as Appendix A.

Ltd., No. 92-C-7330, 1993 WL 427454, at *9 (N.D. Ill. Oct. 21, 1993) (attached hereto as Appendix B).[3]

In AIC Security Investigations, the defendant argued that the ADA does not provide a cause of action against individuals such as herself, the sole shareholder of a corporation that had also been named as a party-defendant. The defendant argued that only the corporation could be held liable for damages arising out of the company's discriminatory actions against a person with a disability. Id. at *6.

The court rejected this argument. Instead, it stated that:

> Absent a clear and express statutory directive to the contrary, this court does not believe that the remedial purposes of the ADA were intended to relieve from personal liability those supervisory employees committing discriminatory acts.
>
> In the particular case here, defendant [] was the principal, if not the only, motivating force behind [the corporation's] discriminatory action. As the sole shareholder of the corporation, she was responsible for making the discriminatory decision on behalf of the employer corporation to discharge [the plaintiff]. The facts clearly established that [defendant] directly participated in, and in fact made that decision and ordered it to be carried out. Under these

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[3] AIC Security Investigations was brought pursuant to title I of the ADA, which prohibits discrimination on the basis of disability in the employment context. Title I provides, in pertinent part, that "no covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual..." 42 U.S.C. § 12112(a). "Covered entity" is defined as "an employer, employment agency, labor organization, or joint labor-management committee," 42 U.S.C. §12111(2), and the term "employer" is defined as "a person engaged in an industry affecting commerce who has 15 or more employees ..., and any agent of such person." 42 U.S.C. § 12111(5)(A). This language parallels the title III prohibition of discrimination by any "person" who owns or operates a place of public accommodation.

> circumstances defendant [] is not relieved of liability.

Id. at 427454, at *9.

In the instant case, the United States intends to demonstrate that Dr. Morvant participated in, authorized, and implemented the decision not to treat HIV-positive persons in his dental office. Just as the defendant in AIC Security Investigations could not hide behind the shield of the corporate entity, Dr. Morvant cannot do so now. Even if liability can also be imputed to "Drew B. Morvant, A Professional Dental Corporation," there is nothing in the ADA that relieves Dr. Morvant of personal liability for his actions.

In fact, "it is well settled law that when corporate officers directly participate in or authorize the commission of a wrongful act, even if the act is done on behalf of the corporation, they may be personally liable." Moss v. Ole South Real Estate, Inc., 933 F.2d 1300, 1312 (5th Cir. 1991) (citations omitted) (president and sole shareholder of real estate company may be held personally liable for racially discriminatory acts in violation of federal civil rights statutes, 42 U.S.C. §§ 1981, 1982, 1985). See also 3 William M. Fletcher, Fletcher Cyclopedia of the Law of Private Corporations, § 1135 (perm. ed. rev. vol. 1986). Numerous courts have imposed personal liability on the officers or directors of a corporation who directly participated in the illegal acts giving rise to the corporation's liability under federal civil rights statutes. See, e.g., Northside Realty

Assocs., Inc. v. United States, 605 F.2d 1348, 1354 (5th Cir. 1979) (Fair Housing Act); Dillon v. AFBIC Development Corp., 597 F.2d 556, 562 (5th Cir. 1979) (Fair Housing Act and 42 U.S.C. § 1982); Faraca v. Clements, 506 F.2d 956, 959 (5th Cir.), cert. denied, 422 U.S. 1006 (1975) (42 U.S.C. § 1981). See also, Al-Khazraji v. Saint Francis College, 784 F.2d 505, 518 (3rd Cir. 1986), aff'd, 481 U.S. 604 (1987) (42 U.S.C. § 1981); Tillman v. Wheaton-Haven Recreation Ass'n, Inc., 517 F.2d 1141, 1146 (4th Cir. 1975) (42 U.S.C. §§ 1981 and 1982); Vakharia v. Swedish Covenant Hosp., 824 F. Supp. 769, 785 n.2 (N.D. Ill. 1993) (Age Discrimination in Employment Act ("ADEA") and Title VII); Bridges v. Eastman Kodak Co., 800 F. Supp. 1172, 1180, (S.D.N.Y. 1992) (Title VII); Wanamaker v. Columbian Rope Company, 740 F. Supp. 127, 135 (N.D.N.Y. 1990) (ADEA); Kwoun v. Southeast Missouri Professional Standards Review Org., 622 F. Supp. 520, 524-25 (E.D. Mo. 1985) (42 U.S.C. §§ 1981 and 1985); Leadership Council for Metro. Open Communities v. Chicago Southwest Holiday Inn Operators Oak Lawn Lodge, Inc., No. 84-C-7564, 1985 WL 3601, at *2 (N.D. Ill. Oct. 31, 1985) (42 U.S.C. § 1981 and Fair Housing Act).[4] Accordingly, this action may be brought against

[4] The courts uniformly have imputed personal liability to the owners or directors of a corporation whose actions violated the Fair Housing Act and/or 42 U.S.C. § 1981. See, e.g., Vakharia, 824 F. Supp. at 785 (noting that courts around the country concur in the personal liability of decisionmaking employees under § 1981); Leadership Council, 1985 WL 3601, at *2 (noting that a corporate officer, if sued under the Fair Housing Act, is always personally liable for the discriminatory acts of subordinate employees). Under ADEA and Title VII, however, there has been a split in the courts. See Wanamaker, 740 F. Supp. at 135 (corporate officers and directors may be individually liable

Dr. Morvant in his individual capacity.

b. Dr. Morvant may be sued in his individual capacity under state law

In addition, Defendant's entire argument that he cannot be sued in his individual capacity rests on an erroneous application of Rule 17(b) of the Federal Rules of Civil Procedure. Rule 17(b) provides that the procedural question of whether one has the capacity to sue or be sued -- whether, regardless of the particular claim or defense being asserted, one has a personal right to appear in court -- is an issue governed primarily by

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for violations of ADEA if they exercise control over an employee); contra Weiss v. Coca Cola Bottling Co., 772 F. Supp. 407, 411 (N.D. Ill. 1991) (corporate agent may not be sued in his individual capacity under Title VII).

The distinction seems to be based on the types of damages available under the various statutes. Under the Fair Housing Act and 42 U.S.C. § 1981, a plaintiff may seek compensatory and punitive damages, damages that an individual defendant can be expected to pay. Under ADEA and Title VII, however, the only remedies available prior to 1991 were injunctive relief (change in policy, reinstatement) and back pay, damages most logically sought against an employer rather than an individual defendant. With the enactment of the Civil Rights Act of 1991, this split should soon be resolved. See Hangebrauck v. Deloitte & Touche, No. 92-C-3328, 1992 WL 348743 at *3 (N.D. Ill. Nov. 9, 1992) (noting in a Title VII case that "the availability of compensatory and punitive damages under the 1991 Act alters this conclusion [that agents of a corporation may not be held personally liable] in those cases to which the Act applies"); Bridges, 800 F. Supp. at 1180. But see Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 587 (9th Cir. 1993) (declining to impute personal liability to agents of employers who had violated Title VII).

The ADA authorizes the Attorney General to seek the full panoply of damages.

state law.[5] See generally 6A Charles A. Wright et. al., Federal Practice and Procedure: Civil § 1559 (2d ed.).

The Louisiana Code of Civil Procedure provides that "[a] competent major and a competent emancipated minor have the procedural capacity to be sued." La. Code Civ. Proc. Ann. art. 731 (West 1993). Defendant has never asserted that he is not a competent major. Moreover, there is nothing in the Code that proscribes the naming of both an individual and the corporate entity under which he practices as defendants to an action. Accordingly, pursuant to Rule 17(b) and the relevant state statute, Dr. Morvant has the capacity to be sued.[6]

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[5] Rule 17(b) provides:

> The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C. §§ 754 and 959(a).

[6] Even if Louisiana corporation law was applicable, Dr. Morvant still could be held personally liable for his discriminatory acts. As the Louisiana Supreme Court stated in a case cited in Defendant's memorandum:

2. Drew B. Morvant, A Professional Dental Corporation, is a Proper Party-Defendant

In any event, Drew B. Morvant, A Professional Dental Corporation, is a proper party-defendant. At all times relevant to this action, Dr. Morvant practiced dentistry as a professional dental corporation, duly incorporated under the laws of the state of Louisiana. Pursuant to L.S.A.-C.C.P. art. 739, the corporation has the procedural capacity to be sued in its corporate name.[7] The corporation operates a place of public accommodation, and, therefore, may be held liable for the

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> The law is settled that if an officer or agent of a corporation through his fault injures another to whom he owes a personal duty, whether or not the act culminating in the injury is committed by or for the corporation, the officer or agent is liable personally to the injured third person, and it does not matter that liability might also attach to the corporation.

H.B. "Buster" Hughes, Inc. v. Bernard, 318 So. 2d 9, 12 (La. 1975) (cited in Defendant's Memorandum at 4). See also LAS-C.C. art. 2315 ("Liability for acts causing damages"); Dillon v. AFBIC Development Corp., 597 F.2d 556, 562 (5th Cir. 1979) (actions based upon federal antidiscrimination statutes are essentially actions in tort).

Defendant's memorandum relied on a number of state cases that found that the owners or directors of a corporation could not be held personally liable for the debts of the corporation. See, e.g., Riggins v. Dixie Shoring Co., Inc., 590 So. 2d 1164, 1168-69 (La. 1991), reh'g denied, 592 So. 2d 1282 (La. 1992); Jones v. Briley, 593 So. 2d 391, 394 (La. Ct. App. 1991). In each case cited by the Defendant, however, the debts of the corporation had been caused by others, not by the personal acts of the owners or directors.

[7] L.S.A.-C.C.P. art. 739 provides:

> Except as otherwise provided . . . , a domestic or foreign corporation, or a domestic, foreign, or alien insurance corporation, has the procedural capacity to be sued in its corporate name.

discriminatory acts of Dr. Morvant and his employees or agents under the ADA.[8]

The United States is seeking leave of this Court to amend its Complaint so that Drew B. Morvant, A Professional Dental Corporation, may be named as an additional party defendant.[9] See Plaintiff's Motion for Leave to Amend Complaint at 1. Accordingly, even if this Court finds that Dr. Morvant cannot be held liable in his individual capacity, the United States has stated a claim upon which relief can be granted. Defendant's Motion to Dismiss, therefore, should be denied.

B. THE UNITED STATES MAY SEEK DAMAGES ON BEHALF OF ISMAEL PENA AND/OR HIS HEIRS OR SUCCESSORS

Defendant requests that the portion of Plaintiff's Prayer for Relief seeking an award of monetary damages to Ismael Pena be

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[8] As noted above, the implementing regulation for title III proscribes discrimination on the basis of disability by "any private entity who owns, leases (or leases to), or operates a place of public accommodation. 28 C.F.R. § 36.201(a) (emphasis added). "Private entity" is defined as any "person or entity other than a public entity." Id. at § 36.104. See note 1, supra.

[9] The United States failed to name "Drew B. Morvant, A Professional Dental Corporation" in the original Complaint because Dr. Morvant had never indicated, in his earlier correspondence with the Department of Justice, that he practiced dentistry as a professional corporation. In response to the Department's request for "[i]nformation concerning your dental practice, including who owns and operates the practice," Dr. Morvant responded, "I own the practice and am the sole dentist." Moreover, Dr. Morvant's letters to the Department were signed "Drew B. Morvant, D.D.S.," and his stationery letterhead read:

Drew B. Morvant, D.D.S.
921 Canal Street -- Suite 935
New Orleans, LA 70112

stricken. Defendant's Memorandum at 6. Defendant maintains that the ADA does not allow an award of damages to an individual no longer living, and that the United States may not, therefore, seek damages on Mr. Pena's behalf. Id. Defendant's argument is erroneous. Pursuant to 42 U.S.C. § 1988 and LSA-C.C. art. 2315.1, Plaintiff's claim for damages on behalf of Mr. Pena survives.[10]

The ADA authorizes the Attorney General to seek monetary damages on behalf of any "person aggrieved" by Defendant's discriminatory conduct. 42 U.S.C. § 12188 (b)(2)(B). The statute is silent as to whether the Attorney General may seek damages for an aggrieved individual who died prior to the commencement of a civil action. When a civil rights provision of title 42 of the U.S. Code is "deficient" with regard to "suitable remedies" in federal civil rights actions, 42 U.S.C. § 1988

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[10] In his memorandum, Defendant relied on two irrelevant cases, Saad v. Burns Intn'l Sec. Servs., Inc., 456 F.Supp. 33 (D.D.C. 1978) and Gierlinger v. New York State Police, 738 F. Supp. 96 (W.D.N.Y. 1990). Defendant argues that both cases stand for the proposition that "a prayer for relief ... seeking recovery which is not authorized by statute is properly stricken." Defendant's Memorandum at 6. In both cases, the courts, relying on case law that held that punitive damages are not available under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 20003-5(g), ordered stricken from the pleadings demands for punitive damages.

These cases are inapposite. In the instant case, the United States has requested that compensatory damages be awarded to Ismael Pena, a person injured by Defendant's discriminatory conduct. This demand is, in fact, authorized by the ADA. See 42 U.S.C. § 12188 (b)(2)(B). As the following discussion will demonstrate, the fact that Mr. Pena is no longer living is irrelevant to whether the United States can seek damages on his behalf.

requires the application of "the common law, as modified and changed by the constitution and statutes of the [forum] State ..."[11] Accordingly, Louisiana state law controls.

The Louisiana survivorship statute, LSA-C.C. art. 2315.1, provides in pertinent part:

> A. If a person who has been injured by an offense or quasi-offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi-offense, shall survive for a period of one year from the death of the deceased in favor of:
> (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children;
> (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving; and
> (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
> B. In addition, the right to recover all damages for injury to the decedent, his property or otherwise,

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[11] 42 U.S.C. § 1988 provides in pertinent part:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title ..., for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, ...

> caused by the offense or quasi-offense, may be urged by the decedent's succession representative in the absence of any class of beneficiary set out in the preceding Paragraph. . . .

Mr. Pena died on July 11, 1993. The United States' claim for damages, therefore, survives.

Survivability of federal civil rights claims under the Louisiana survivorship statute, LSA-C.C. art. 2315.1, was specifically considered by the Supreme Court in Robertson v. Wegmann, 436 U.S. 584 (1978).[12] In Robertson, the Court found that a cause of action brought pursuant to 42 U.S.C. § 1983, a federal civil rights statute, abated with the plaintiff's death because the substituted plaintiff was not a statutory beneficiary of the decedent. 436 U.S. at 588-92. The Court held that since 42 U.S.C. § 1983 was silent as to the issue of survivability, 42 U.S.C. § 1988 required the district court to apply the Louisiana survivorship law. Id. at 588. See also id. at 589-90 ("[u]nder § 1988, . . . state statutory law . . . provides the principal reference point in determining survival of civil rights actions").

In a more recent case, Bergeron v. Celotex, 766 F. Supp. 518 (E.D. La. 1991), this Court applied the survivorship statute and stated that a decedent's statutorily designated beneficiaries may seek those damages the injured person could have claimed had he

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[12] In Robertson, the Court actually interpreted the survivorship provisions of Article 2315, which has since been separated out, amended slightly, and renumbered as Article 2315.1. Overpeck v. Christ Episcopal Church, 577 So. 2d 364, 366 (La. Ct. App. 1991).

lived. Id. at 520. Similarly, in a state case brought on behalf of an individual who had died prior to the filing of the suit, Overpeck v. Christ Episcopal Church, 577 So. 2d 364 (La. Ct. App. 1991), writ denied, 580 So. 2d 925 (La. 1991), the court found that discrimination against a person with AIDS was an "offense or quasi-offense" within the meaning of L.S.A.-C.C. art. 2351.1 and applied the survivorship statute. Id. at 366. Accordingly, pursuant to state law, the claim for damages on behalf of Mr. Pena survives.

This result obtains even though the United States is in a slightly different procedural posture from that of the plaintiffs in the cases described above. At issue in those cases was whether the cause of action survived in favor of the decedent's successors. Here, it is the United States, rather than the aggrieved individual's successors, that has brought the action, and that is seeking damages on the aggrieved individual's behalf. Nevertheless, the Louisiana survivorship statute specifically protects "the right to recover all damages for injury to [the decedent]" and provides that the right survives in favor of the decedent's statutory beneficiaries. LSA-C.C. art. 2315.1.

Precluding Mr. Pena's heirs or successors from being able to recover damages would directly contravene congressional intent and public policy. The ADA was passed to prevent discrimination on the basis of disability and to compensate those persons

injured by deprivation of their federal civil rights.[13] A finding that an aggrieved individual's claim for damages abates with his death would preclude compensation for many, if not most, individuals who were discriminated against on the basis of their HIV-positive status, as many such persons will die prior to the filing of, or during, a civil lawsuit.

Moreover, failure to compensate the aggrieved individual's heirs or successors might adversely affect the ADA's role in preventing discrimination on the basis of disability. Without the threat of a claim for damages, there will be little incentive for private entities to refrain from discriminating against HIV-positive persons. See, e.g., Vakharia, 824 F. Supp. at 786 ("if the people who make discriminatory decisions do not have to pay for them, they may never alter their illegal behavior and the wrongdoers may elude punishment entirely").

Thus, pursuant to 42 U.S.C. § 1988 and LSA-C.C. art. 2315.1, the United States' claim for damages on behalf of Mr. Pena survives. The government believes that asking this Court to award damages to Mr. Pena was sufficient to preserve the rights of Mr. Pena's heirs or successors. Nevertheless, the United States has sought leave to amend its Complaint and has asked this

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[13] See 42 U.S.C. § 12101(a)(4) ("The Congress finds that . . . unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination."); 42 U.S.C. § 12101(b)(1)("It is the purpose of this Act to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.").

Court to award monetary damages to "Mr. Pena and/or his heirs or successors." See Plaintiff's Motion for Leave to Amend Complaint at 2. Accordingly, Defendant's Motion to Strike Plaintiff's request for damages for Mr. Pena should be denied.

C. THE UNITED STATES MAY SEEK DAMAGES ON BEHALF OF "OTHER AGGRIEVED PERSONS" NOT YET NAMED IN THE COMPLAINT

Defendant also asserts that the United States cannot seek damages on behalf of "other persons aggrieved," because the Complaint does not identify the persons entitled to such damages. Defendant's Memorandum at 7.

The Complaint alleges that Dr. Morvant has engaged in a "pattern or practice" of discrimination. See First Amended Complaint at ¶ 17. The very nature of a pattern or practice claim, in which it is alleged that the defendant has engaged in a series of ongoing discriminatory acts, makes it next to impossible to identify all aggrieved individuals at the time the complaint is filed. See United States v. Balistrieri, 981 F.2d 916, 935-36 (7th Cir. 1992), cert. denied, 114 S. Ct. 58 (1993). Indeed, as pattern or practice cases involve broad allegations of ongoing discrimination, the United States should not have to defer the filing of such cases until it has identified all persons who likely have been harmed.

There is nothing in the ADA that preconditions an aggrieved person's eligibility for an award of damages on whether the government knew the person was a victim of discrimination before it filed the complaint, or whether, as is anticipated in the instant case, such knowledge comes to the government during

discovery.[14] Indeed, precedent under similar provisions in other civil rights laws requires no such delay. Under the Fair Housing Act, 42 U.S.C. § 3614(a), where the Attorney General is authorized to file a complaint alleging a pattern or practice of housing discrimination, the government may also seek compensatory damages on behalf of "persons aggrieved." Id. at § 3614(d)(1)(B). Individuals' eligibility for relief is not limited by the government's knowledge of specific individuals at the time the complaint is filed; rather, any individual who was discriminated against during the period of the discrimination is eligible for compensatory damages. See, e.g., Balistrieri, 981 F.2d at 935 ("nothing in the [Fair Housing Act] demands, or even implies that damages are proper only for people the government knows about at the time it files the complaint").

Similarly, under Title VII of the Civil Rights of 1964, 42 U.S.C. § 2000e-6, the United States is authorized to bring pattern or practice employment discrimination actions and to seek monetary awards for all victims of discrimination. As the

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[14] The ADA provides:

> If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination under this title, ... the Attorney General may commence a civil action in any appropriate United States district court.
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> In a civil action under [the preceding paragraph], the court ... may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General ...

42 U.S.C. §§ 12188 (b)(1)(B)(i) and (b)(2)(B).

Supreme Court noted in Teamsters v. United States, 431 U.S. 324, 360 (1977), "[a]t the initial, 'liability' stage of a pattern-or-practice suit the Government is not required to offer evidence that each person for whom it will ultimately seek relief was a victim of the employer's discriminatory policy. Its burden is to establish a prima facie case that such a policy existed." See also United States v. Lee Way Motor Freight, Inc., 625 F.2d 918, 939-940, 945 (10th Cir. 1979).

Defendant argues that pursuant to Rule 8 of the Federal Rules of Civil Procedure, the complaint must give the defendant fair notice of the claim, and the grounds upon which the claim rests. Defendant's Memorandum at 8. The United States has, in fact, done so, to the extent information was available at the time the Complaint was filed. The Complaint puts Defendant on notice that the government is seeking damages for all aggrieved persons it might discover. Moreover, because Defendant is entitled to know information about other aggrieved individuals identified through discovery, the government intends to notify Defendant if, and as soon as, it learns the identity of such persons.

There is simply no support for Defendant's position that only victims known to the government at the time the complaint is filed are eligible for monetary relief. Accordingly, Defendant's Motion to Strike the government's demand for monetary damages to "other persons aggrieved" should be denied.

CONCLUSION

For the foregoing reasons, the government respectfully requests that Defendant's Motion to Dismiss/Motion to Strike be denied in full.

Respectfully submitted,

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