

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

LARRY AKINS

PLAINTIFF

v.

Case No. 4:14-cv-00208-KGB

LM WIND POWER BLADES (ARKANSAS) INC.

DEFENDANT

ORDER

Plaintiff Larry Akins brings this action against defendant LM Wind Power Blades (Arkansas) Inc. (“LM”) for alleged violations of Mr. Akins’s rights under the Family and Medical Leave Act (“FMLA”) and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (Dkt. No. 1). Before the Court is LM’s Federal Rule of Civil Procedure 12(b)(6) motion to dismiss Mr. Akins’s Equal Protection claim (Dkt. No. 5). Mr. Akins did not file a response to the motion to dismiss, and the time to do so has now passed.

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

The Fourteenth Amendment “applies to acts of the states, not to acts of private persons or entities.” *Rendell-Baker v. Kohn*, 457 U.S. 830, 837-38 (1982) (citing *Civil Rights Cases*, 109 U.S. 3, 11 (1883); *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)). LM contends that it is a private entity, not a state or federal actor, and that no claim can be brought against it under the Fourteenth Amendment (Dkt. No. 5). In his complaint, Mr. Akins describes LM as a “corporation that was duly authorized to conduct business” and states that it is an “employer in

the private sector” (Dkt. No. 1, at 2-3). Mr. Akins has pleaded no facts indicating that LM acted under the color of state or federal law. Based on Mr. Akins’s own categorization of LM and the controlling cases, Mr. Akin has failed to state an Equal Protection claim under the Fourteenth Amendment against LM upon which relief can be granted.

For these reasons, the Court grants LM’s motion to dismiss Mr. Akins’s Equal Protection claim. Mr. Akins’s FMLA claim survives this motion.

SO ORDERED this 12th day of June, 2014.



KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE