

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

Hus Hari Buljic individually and as Administrator of the Estate of Sedika Buljic, Honario Garcia individually and as Administrator of the Estate of Reberiano Leno Garcia, and Arturo de Jesus Hernandez and Miguel Angel Hernandez as Co-Administrators of the Estate of Jose Luis Ayala, Jr.,

Plaintiffs,

vs.

Tyson Foods, Inc., Tyson Fresh Meats, Inc., John H. Tyson, Noel W. White, Dean Banks, Stephen R. Stouffer, Tom Brower, Tom Hart, Cody Brustkern, John Casey, and Bret Tapken,

Defendants.

Case No. 6:20-cv-02055-KEM

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**RESPONSE TO PLAINTIFFS' SECOND MOTION  
FOR LEAVE TO AMEND THE COMPLAINT**

Plaintiffs assert workplace injury claims arising from the deaths of their relatives—Sedika Buljic, Reberiano Leno Garcia, and Jose Luis Ayala—from COVID-19. That Ms. Buljic, Mr. Garcia, and Mr. Ayala are among the hundreds of thousands of Americans who have died of complications related to COVID-19 is a tragedy.

This Court is the wrong forum to resolve Plaintiffs' claims. The exclusive remedy provisions of the Iowa Workers' Compensation Act ("IWCA") direct that workplace injury claims must be adjudicated by the Iowa Division of Workers' Compensation, pursuant to the substantive and procedural rules of the Iowa workers' compensation system.

Plaintiffs have repeatedly sought leave to amend their pleadings—dismissing existing defendants, adding new defendants, and now seeking to re-add a previously-dismissed defendant, along with other changes—in an apparent attempt to avoid the application of the IWCA to their claims. But nothing in any of the proposed amendments changes the fact that Plaintiffs’ workplace injury claims are governed by the workers compensation system.

Defendants vigorously oppose the claims set forth in the Second Amended Complaint, just as they have vigorously opposed claims in the original Petition and the First Amended Complaint. Nevertheless, Defendants are mindful of the liberal standard for amendment of pleadings under the Federal Rules, and on that basis Defendants do not oppose Plaintiffs’ Second Motion to Amend.

Defendants respectfully suggest, however, that the amendment process at some point must cease so that the Court can address the core question of the proper forum for Plaintiffs’ workplace injury claims.

Defendants will oppose and challenge the sufficiency of the Second Amended Complaint under Rule 12 through a motion to dismiss. As set forth in Defendants Motion for Extension filed concurrently herewith, Defendants request that the deadline to file their motion to dismiss be set for January 4, 2021—the same date recently set by the Court for Defendants to file a motion to dismiss the amended complaint in *Fernandez v. Tyson Foods, Inc., et al.* Case No. 6:20-CV-02079. [Dkt. 38]

### **Procedural Background**

Plaintiffs’ original complaint was filed on June 25, 2020, against twenty separate individual and corporate defendants. [Dkt. 3] Defendants filed motions to dismiss all claims against all defendants because Plaintiffs were asserting workplace injury claims that must be adjudicated by the Iowa Division of Workers’ Compensation and also because the asserted claims were not adequately plead. [Dkt. 24, 25]

Plaintiffs did not file a substantive response to those motions to dismiss. Instead, Plaintiffs agreed that Defendants had asserted a number of “well-thought-out

arguments,” (Dkt. 27), and on November 6, Plaintiffs sought leave to file a First Amended Complaint, in which Plaintiffs dismissed eleven defendants and added two new defendants. [Dkt. 35] On November 18, 2020, the court issued an Order granting the Motion for Leave to Amend the Complaint and setting a new deadline for Defendants to move to dismiss the First Amended Complaint. [Dkt. 39]

In the meantime, the Court entered a Trial Scheduling Order on October 19, setting forth various discovery and other pretrial deadlines in anticipation of a January 27, 2022 trial ready date. [Dkt. 30]

### Discussion

Defendants vigorously dispute the claims set forth in the Second Amended Complaint. Defendants are mindful, however, of the liberal standard for granting leave to amend, and on that basis Defendants do not formally oppose Plaintiffs’ Second Motion for Leave to Amend the Complaint. *See* Fed. R. Civ. P. 15(2).

Defendants advise the court that they intend to challenge the sufficiency of the claims and allegations of the Second Amended Complaints under Rule 12 through a motion to dismiss. Defendants believe the claims asserted in the Second Amended Complaint lack merit, that the new and unsubstantiated allegations set forth in that pleading do not cure the deficiencies of the original complaint or the First Amended Complaint, and that Plaintiffs’ workplace injury claims should be resolved by the workers’ compensation commission.

/s/ Kevin J. Driscoll

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## CERTIFICATE OF SERVICE

This is to certify that, on December 8, 2020, a true and correct copy of the foregoing document was served upon all counsel of record via the Court's CM/ECF system as follows:

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