

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

RURAL COMMUNITY WORKERS)
ALLIANCE and JANE DOE,¹)
)
Plaintiffs,)
)
v.)
)
SMITHFIELD FOODS, INC. and)
SMITHFIELD FRESH MEATS CORP.,)
)
Defendants.)

No. 5:20-CV-06063-DGK

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This lawsuit arises from Plaintiffs' allegations that Defendant Smithfield Foods, Inc. and its wholly owned subsidiary, Defendant Smithfield Fresh Meats Corporation (collectively, "Smithfield") have failed to adequately protect workers at its meat processing plant in Milan, Missouri, ("the Plant" or "the Milan Plant") from the virus that causes COVID-19. Now before the Court are Plaintiffs' Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction (Doc. 3), and Smithfield's motion to dismiss and/or stay pursuant to the primary-jurisdiction doctrine (Doc. 28).

After carefully reviewing the motions and the existing record, the Court holds that it should decline to hear this matter pursuant to the primary-jurisdiction doctrine to allow the Occupational Health and Safety Administration ("OSHA") to consider the issues raised by this case. But even if the Court did not apply the primary-jurisdiction doctrine, the Court would not

¹ The Court notes that there is currently a motion pending to allow Jane Doe to proceed using a pseudonym (Doc. 42). Given the Court's dismissal of this action and the denial of injunctive relief, the Court finds that requiring Plaintiff to reveal her identity would serve no important purpose, especially given that another named plaintiff appears in this case. The issues presently before the Court are—for the most part—purely legal, and the majority of Plaintiff's allegations are not individualized. Thus, the public's interest in Plaintiff's identity and the prejudice to Smithfield in allowing Plaintiff to proceed anonymously for purposes of deciding the instant motions is minimal. Plaintiff Doe may therefore use a pseudonym for purposes of the motions presently before this Court. This Court reserves judgment on her ability to do so should this case proceed to further stages of litigation.

issue a preliminary injunction because Plaintiffs have not met their burden of proving that the extraordinary remedy of an affirmative injunction is justified. Smithfield's motion is GRANTED, and the case is DISMISSED WITHOUT PREJUDICE.

Background

The Background section of this order is arranged in chronological order. Although regrettably lengthy, it details how the regulatory environment in which meat-processing plants operate is constantly changing during this unique national emergency.

In late 2019, a new coronavirus emerged named severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).² This virus causes coronavirus disease 2019 (COVID-19), a respiratory illness that can cause serious health problems, including death.³ SARS-CoV-2 is highly contagious; it appears to spread from person to person through respiratory droplets produced when an infectious person coughs, sneezes, or talks, and the virus can be spread by presymptomatic, or even asymptomatic, individuals.⁴

A global pandemic ensued, and the virus and COVID-19 reached the United States in early 2020. On March 13, 2020, the President declared a national emergency concerning COVID-19. That same day, Missouri's governor also declared a state emergency, and on April 3, the Missouri Department of Health and Senior Services issued a stay-at-home order that mandated all individuals abide by social-distancing requirements and closed all nonessential

² Ctrs. for Disease Control and Prev. & Occ. Safety and Health Admin., Meat and Poultry Processing Workers and Employers, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html> (April 26, 2020).

³ *Id.*

⁴ *Id.*

businesses in Missouri through May 4.⁵ The stay-at-home order defines essential businesses in accordance with guidance from the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (“Homeland Security”), which identified livestock-slaughter facilities, including the Plant and its operations, as “critical infrastructure.”⁶ On April 9, the Centers for Disease Control (“CDC”) published *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, which outlined several policies and procedures employers should implement to help prevent workplace exposure and community spread of the virus.

On April 22, OSHA sent Smithfield a “Rapid Response Investigation” requesting information regarding its COVID-19 work practices and infection at the Milan Plant, giving Smithfield seven days to respond. As part of its inquiry, OSHA requested information about Smithfield’s COVID-19 practices including what, if any, personal protective equipment has been given to its workers, what engineering controls have been implemented, what contact tracing methods have been employed, and what policies have been changed or implemented in light of the pandemic (Doc. 29-2). Smithfield responded on April 29 (Doc. 41).

The next day, on April 23, Plaintiffs Jane Doe and the Rural Community Workers Alliance (“RCWA”) filed suit. They allege Smithfield is not taking adequate steps to prevent transmission of the virus at its Plant, thereby endangering workers and members of the surrounding community. According to her declaration, Doe is a current Smithfield employee who has worked at its Milan Plant for at least five years. She claims she currently works on the

⁵ Mo. Dep’t of Health & Senior Servs., Stay at Home Order, <https://governor.mo.gov/priorities/stay-home-order> (Apr. 3, 2020).

⁶ U.S. Dep’t of Homeland Sec., Cybersec. & Infrastructure Sec. Agency, Guidance on the Essential Critical Infrastructure Workforce, https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_3.pdf (April 17, 2020).

“cut floor” where animals are broken down into products and packaged.

The RCWA is a Missouri non-profit advocacy group whose members consist exclusively of workers in Northern Missouri. Several members of RCWA’s current leadership council work at the Plant, and sixty to seventy workers who attend its meetings work at the Plant, including Jane Doe.

Defendant Smithfield is one of the largest meat-processing companies in the world, with meat-processing plants all over the United States, including in Milan, Missouri. Several of its meat-processing plants in the United States have closed recently due to outbreaks of COVID-19 among its workers.

The Complaint (Doc. 1) alleges that several meat-processing plants in this country owned and operated by Smithfield have become major COVID-19 “hot spots.” It also alleges that in direct contravention of CDC guidelines, Smithfield has not implemented certain precautions to keep its workers and the Milan community safe from the virus. Such measures include keeping adequate distance between workers, prohibiting workers from taking a break to wash their hands or face, preventing workers from covering their faces if they need to cough or sneeze, implementing a sick-leave policy that penalizes workers for missing work even if they are exhibiting COVID-19 symptoms, and failing to implement plans for testing and contact tracing.

The Complaint brings state-law claims for public nuisance and breach of duty to provide a safe workplace. Plaintiffs are not seeking monetary damages, only declaratory judgments stating that: (1) Smithfield’s practices at the Plant constitute a public nuisance; and (2) Smithfield has breached its duty to provide a safe workplace.

The same day Plaintiffs filed suit, they also moved for a temporary restraining order and preliminary injunction (Doc. 3), seeking to force Smithfield to: provide masks; ensure social

distancing; give employees an opportunity to wash their hands while on the line; provide tissues; change its leave policy to discourage individuals to show up to work when they have symptoms of the virus; give workers access to testing; develop a contact-tracing policy; and allow their expert to tour the Plant. Attached to the motion were declarations from: (1) Jane Doe, who described working conditions at the Plant and stated she was afraid for health and safety, as well as the health and safety of the Milan community, because of what she considers inadequate safety procedures at the Plant; (2) RCWA's Executive Director, Alex Fuentes; (3) a senior lobbyist with the non-profit organization Food & Water Watch ("FWW"), Anthony Corbo; (4) a lawyer, Thomas Fritzsche, who has interviewed a number of Alabama poultry-plant workers about working conditions and authored a 2013 report for the Southern Poverty Law Center about modern industrial slaughterhouse workers; and (5) an occupational-medicine specialist, Dr. Robert Harrison, who works as Clinical Professor of Medicine at the University of California, and also serves the California Department of Public Health.

On April 26, the Court set a videoconference hearing on the preliminary injunction motion for April 30. That same day, the CDC and OSHA issued *Meat and Poultry Processing Workers and Employers – Interim Guidance* ("the Joint Guidance"), which provided supplemental guidance to meat-processing plants concerning COVID-19.⁷ The Joint Guidance states that to reduce the risk of transmission among employees, employers at meat-processing facilities should, where "feasible," implement engineering controls, such as staggering shifts and breaks, requiring workers to stay six-feet apart, and/or erecting physical barriers; place handwashing or hand-sanitizing stations in multiple locations and encourage hand hygiene; give workers additional short breaks to wash hands; provide tissues; and allow workers to take breaks

⁷ Ctrs. for Disease Control and Prev. & Occ. Safety and Health Admin., *Meat and Poultry Processing Workers and Employers*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html> (Apr. 26, 2020).

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