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## MOTION

Defendants Jason Orsak, Erica Anthony, and Maria Cruz (collectively the “Employee Defendants”) join Tyson Foods, Inc.’s Motion to Dismiss, and respectfully request dismissal of the claims asserted against them on the grounds set forth in that motion.

In addition, the Employee Defendants move for dismissal with prejudice under Rule 12(b)(6) and/or for judgment on the pleadings under Rule 12(c) on the additional ground that Texas law permits workplace safety claims to be asserted only against an employer, not against co-employees.

## INTRODUCTION AND STATEMENT OF ISSUES

Plaintiffs allege that Tyson Foods, Inc. (“Tyson”) failed to provide a safe work environment at Tyson’s Center, Texas poultry processing facility. Under Texas law, that claim can only be alleged against Tyson itself—not against individual Tyson employees. *See, e.g., Leitch v. Hornsby*, 935 S.W.2d 114, 117 (Tex. 1996) (“When the employer is a corporation, the law charges the corporation itself, not the individual corporate officer, with the duty to provide the employee a safe workplace.”).

Despite this clear rule, in a transparent attempt to defeat diversity jurisdiction, Plaintiffs have also asserted claims against three Tyson employees—Jason Orsak, Erica Anthony, and Maria Cruz. Those claims are improper under Texas law, and should be dismissed.

## BACKGROUND

Plaintiffs filed this lawsuit in the District Court of Shelby County, Texas in June 2020, originally naming only the Employee Defendants and alleging claims for negligence and gross negligence. [Dkt. 1-1] Plaintiffs later filed a First Amended Complaint and added Tyson as a defendant. [Dkt. 1-1] All Defendants then timely

removed to federal court based on federal officer and federal question jurisdiction.  
[Dkt. 1]

The First Amended Complaint makes substantially identical allegations against Tyson and the Employee Defendants:

Upon information and belief, Defendants Tyson, Inc.; Jason Orsak; Erica Anthony; and Maria Cruz failed to fulfill their job duties to provide a safe working environment to Plaintiffs. Defendants Orsak, and Anthony failed to issue masks to employees, institute six feet barriers between employees, limit contact between employees, and create rideshare alternatives to the Plant's bus system. As a direct result of the negligence and gross negligence of Defendants, Plaintiffs contracted COVID-19 at the Center, Texas meatpacking plant and has [sic] experienced significant injuries as a result.

[Dkt 1-1 ¶ 26; *see also id.* ¶ 31 (alleging that “Defendants are negligent and grossly negligent for the following reasons”).] The First Amended Complaint likewise alleges that the alleged conduct at issue was “effectuated through both Tyson Foods and the named Defendants.” [*Id.* ¶ 29]

Aside from allegations that identify names and job titles, the First Amended Complaint fails to assert any substantive allegations against the Employee Defendants that are not also asserted in identical terms against Tyson.

## ARGUMENT

This case is not about any particular action taken by Jason Orsak, Erica Anthony, or Maria Cruz. Instead, Plaintiffs have asserted claims related to workplace safety and the duty to “provide a safe working environment.”

Under Texas law, those claims cannot be asserted against the Employee Defendants. Instead, because workplace duties are “nondelegable” and belong “solely” to the employer, such claims can only be brought against Tyson. *See, e.g., Leitch*, 935

S.W.2d at 117 (“When the employer is a corporation, the law charges the corporation itself, not the individual corporate officer, with the duty to provide the employee a safe workplace.”); *see also In re Butt*, 495 S.W.3d 455, 467 (Tex. Ct. App. 2016) (holding that liability “cannot be imposed on employees where the employer and the employees committed the identical negligent acts or omissions”).

The reason for this rule is simple: Texas law places responsibility for workplace safety on the company—but not on co-employees—to “ensure[] that the party with the duty is the one with the ability to carry it out.” *Gen. Elec. Co. v. Moritz*, 257 S.W.3d 211, 216 (Tex. 2008).

Applying these principles, Texas courts (and federal courts applying Texas law) routinely hold—on facts similar to this case—that individual co-employees cannot be liable where the duty alleged to have been breached is the duty to keep the workplace safe. *See, e.g.:*

✚ ***Leitch v. Hornsby***, 935 S.W.2d 114 (Tex. 1996).

- In *Leitch*, the plaintiff sued his employer and two corporate officers, alleging that he was injured at work because “all three defendants did not provide a safe work place and equipment, did not provide proper equipment, did not provide a protective lift belt, and did not give safety instructions and training.” *Id.* at 116.
- The Texas Supreme Court, reversing the lower court, held that the corporate employees “had no individual duty as corporate officers to provide [the plaintiff] with a safe workplace,” and therefore could not be liable as a matter of law. *Id.* at 118.
- Instead, the Supreme Court clarified that the “duty to provide a safe workplace was a nondelegable duty imposed on, and belonging solely to” the plaintiff’s employer. *Id.*

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