IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Jaime Wazelle; Tay Aung; Elizabeth Casel; Manivanh Chanthanakhone; Manuel Contreras; Rebeca Corral; Patricia Cossey; Jozette Escoto; Cruz Garcia, Sr.; Sheryl Gardner; Denetria Gonzalez; Rene Gutierrez; Brian Hall; Brandon Ivory; Nini Aye Kayahphu; Ko Latt; Armando Lira; Derestia Lira; Mya Lira; Valarie Lira; Aung Moe; Bia Morris; Maleak Rector; Maricela Rios; Natasha Rios; Guadalupe Rondan; Miguel Rondan; Javier Rubio; Ignacio Ruiz; Sylvia Ruiz; Mitchell Sanchez; Billy Shaw; Kyaw Soe; Nyein Soe, Thida Soe; Breana Solis; Ladonna Trull; and Tin Soe Individually and as Personal Representative of the Estate of Maung Maung Tar,	§ § § § § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 2:20-CV-00203-Z
Plaintiffs,	§ §	
v.	§ §	
Tyson Foods, Inc.; Ernesto Sanchez; Kevin Kinikin; and Farren Fernandez,	§ § § § §	
Defendants	§	

**PLAINTIFFS' RESPONSE TO DEFENDANT
TYSON FOODS, INC.'S SUPPLEMENTAL MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

For the reasons set forth below, the Court should deny Defendant Tyson Foods, Inc.'s

supplemental motion to dismiss Plaintiffs' first amended complaint.

I.

STATEMENT OF THE ISSUES

1.   Does Plaintiffs' first amended complaint allege facts sufficient to survive Tyson's

Rule 12(b)(6) motion to dismiss under the recently enacted Pandemic Liability Protection Act?

II.

SUMMARY OF THE ARGUMENT

This case arises out of injuries Plaintiffs sustained while working at Tyson Foods'

meatpacking plant in Amarillo, Texas. The global COVID-19 pandemic has swept the country

affecting almost 18 million people, and so far has caused the deaths of over 300,000 Americans.

Meatpacking plants have been particularly hard hit as companies like Tyson failed to protect

their employees.

Plaintiffs in this suit contracted COVID-19 while working for Tyson. They filed suit in

Texas state court bringing exclusively state law claims against Tyson for negligence and gross

negligence. Tyson removed the suit and filed a motion to dismiss arguing that Plaintiffs'

complaint fails to properly allege causation and that Plaintiffs' claims are preempted by the

Federal Meat Inspection Act ("FMIA"). Plaintiffs have already responded to that motion

showing that their most recent petition is more than adequate under the federal rules.

Most recently, Tyson has filed a supplemental motion to dismiss arguing that the newly

enacted Pandemic Liability Protection Act is cause for dismissal of Plaintiffs' claims. But even

under this new legislation, Plaintiffs' most recent petition passes muster. Thus, accepting the

pleaded facts as true and resolving all reasonable inferences in Plaintiffs' favor, Plaintiffs' claims

should not be dismissed.

III.

FACTUAL BACKGROUND

Plaintiffs are Tyson workers who contracted COVID-19 because of unsafe working conditions and the negligent acts of Defendants at the Amarillo, Texas Tyson facility.

In the spring of 2020, the COVID-19 pandemic began sweeping the United States. Many states and counties began implementing proactive safety measures to prevent the spread of COVID-19. This included the State of Texas. Texas Governor Greg Abbott issued a stay-at-home order for the state that took effect on April 2, 2020. Despite the stay-at-home order, Plaintiffs were required to continue working at the Tyson meatpacking plant in Amarillo.

Both before and after the April 2 stay-at-home order, Tyson failed to take adequate precautions to protect the workers at its meatpacking facilities, including the Amarillo, Texas plant. Even when the rest of the country and the state of Texas were taking significant precautions to prevent the spread of COVID-19, Tyson failed to do the same. And even after the April 2 order, Tyson still required its employees to come to work and did not provide adequate precautions and protections to help protect its employees from COVID-19.

Tyson was directly responsible for implementing a safe work environment at its Amarillo meatpacking plant. And Tyson was also directly responsible for implementing and enforcing adequate safety measures to prevent the spread of COVID-19 to the Tyson employees working at the Amarillo plant. But despite knowing of the dangers, Tyson failed to provide a safe working environment for Plaintiffs. As a direct result of Tyson's negligence and gross negligence of Plaintiffs contracted COVID-19 at the meatpacking plant. As a result, Plaintiffs have experienced significant injuries.

IV.

LEGAL STANDARD

"A Rule 12(b)(6) motion allows a party to move for dismissal of an action when the complaint fails to state a claim upon which relief can be granted." *Lahman v. Cape Fox Corp.*, 4:17-CV-00305, 2018 WL 4205424, at *1 (E.D. Tex. Sept. 4, 2018) (citing FED. R. CIV. P. 12(b)(6)). But Rule 12(b)(6) motions are generally "'viewed with disfavor'" and are "'rarely granted.'" *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

"To defeat a Rule 12(b)(6) motion to dismiss, a plaintiff must 'nudge[ ] their claim across the line from conceivable to plausible' by pleading 'enough facts to state a claim to relief that is plausible on its face.'" *Webb v. Livingston*, 6:13CV711, 2014 WL 11860703, at *1 (E.D. Tex. May 5, 2014) (annotations as in original) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the [C]ourt to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Lahman*, 2018 WL 4205424, at *1 (citing *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009) (internal quotations omitted)). This means that the plaintiff's complaint "need only include 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Harris v. Coastal Offshore, Inc.*, CIV.A. C-11-58, 2011 WL 2457922, at *2 (S.D. Tex. June 16, 2011) (quoting FED. R. CIV. P. 8(a)(2)). The plaintiff's statement of a claim "must simply give [the] defendant fair notice of what [the] plaintiff's claim is and grounds upon which it rests." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-15 (2002). This is a "liberal and simplified 'notice of pleading' standard." *Id.*

When deciding a Rule 12(b)(6) motion to dismiss, the court "'must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff.'" *Morris v. Conn*

Credit Co., CV H-13-195, 2013 WL 12157173, at *1 (S.D. Tex. July 25, 2013) (quoting *Baker v. Putnal*, 75 F.3d 190, 198 (5th Cir. 1996)). In other words, "[t]he court is required to construe the complaint liberally in favor of the plaintiff, and take all facts pleaded in the complaint as true." *Webb*, 2014 WL 11860703, at *1 (citing *Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986)). Plaintiffs need only establish "more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). And "[a]bsent a claim which is obviously insufficient, a court should not grant a Rule 12(b)(6) motion to dismiss, thereby denying [the] [p]laintiff an opportunity to develop facts to support his complaint." *Hoppenstein v. Ruckel*, 4:14-CV-467, 2015 WL 294295, at *3 (E.D. Tex. Jan. 22, 2015).

V.

ARGUMENT

1. **Plaintiffs' complaint alleges facts that are plausible on there face and establish that Tyson knowingly exposed them to COVID-19.**

    Under the recently enacted Pandemic Liability Protection Act, Plaintiffs need only establish that Tyson "knowingly failed to warn [them] of or remediate a condition that [Tyson] knew was likely to result in the exposure of [Plaintiffs] to the disease" or that Tyson "knowingly failed to implement or comply with government-promulgated standards, guidance or protocols intended to lower the likelihood of exposure to the disease . . ." TEX. CIV. PRAC. & REM. CODE § 148.003(a)(1)(A)-(B). In short, Tyson is liable under the failure to warn prong if it "(i) had control over the condition; (2) knew that [Plaintiffs were] more likely than not to come into contact with the condition; and (3) had a reasonable opportunity and ability to remediate the condition or warn [Plaintiffs] of the condition before [they] came into contact with the condition." TEX. CIV. PRAC. & REM. CODE § 148.003(1)(A)(i)-(iii). And it is liable under the failure to implement prong if Tyson "(i) . . . had a reasonable opportunity and ability to

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