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

LADARIUS JOHNSON; IRMA LOPEZ; PEDRO LOPEZ; TERRY BRACEY; ROSHAWN POLITE; BRANDI WEST; and BRITTNY ARRIETA,	§	
Plaintiffs,	§	**NO. _____**
vs.	§	
TYSON FOODS, INC.,	§	
Defendant.	§	

DEFENDANT TYSON FOODS, INC.'S NOTICE OF REMOVAL

Defendant Tyson Foods, Inc. ("Tyson") removes this civil action under 28 U.S.C. §§ 1331, 1332, 1441, 1442, and 1446. This Court has subject matter jurisdiction, and the case is removable because:

(1) Complete diversity of citizenship exists, and the amount in controversy exceeds the sum of $75,000, exclusive of interests and costs (28 U.S.C. § 1332);

(2) Plaintiffs' Original Petition ("Petition") challenges actions taken by Tyson at the direction of a federal officer, for which Tyson will have a colorable federal defense (28 U.S.C. § 1442(a)(1)); and

(3) The Petition raises substantial and disputed issues of federal law related to national emergency declarations, federal critical infrastructure designations, and the Defense Production Act that must be decided by a federal forum (28 U.S.C. § 1331).

Removal is timely. Tyson was served with the Petition on July 20, 2021, and this Notice is being filed within 30 days thereof. *See* 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

BACKGROUND

This case is brought by seven individuals who allege that they worked at a Tyson meat-processing facility; that they contracted COVID-19 at work; and that they were harmed by the disease. But Plaintiffs' allegations—including allegations of willful misconduct—are inaccurate and incorrect, and Tyson vigorously disputes Plaintiffs' claim. Tyson has worked from the beginning of the pandemic to follow federal workplace guidelines and has invested millions of dollars to provide employees with safety and risk-mitigation equipment. Tyson's efforts to protect its workers while continuing to supply Americans with food continue to this day.

Removal is proper because complete diversity exists, and the amount in controversy exceeds $75,000, exclusive of interest and costs. Additionally, as recently confirmed by both the Northern and Eastern Districts of Texas in cases involving materially identical issues, removal is also proper because this case seeks to countermand federal directions Tyson received to assist the federal government in its efforts to ensure that the greatest national health crisis in a century would not also spiral into a national food shortage. *See Wazelle v. Tyson Foods, Inc.*, No. 2:20-CV-203-Z, 2021 WL 2637335 (N.D. Tex. June 25, 2021); *Fields v. Brown*, No. 6:20-cv-00475, 2021 WL 510620 (E.D. Tex. Feb. 11, 2021).[1]

[1] One court in the Eastern District acknowledged the rulings in *Fields* and *Wazelle* but reached a different result in *Glenn v. Tyson Foods, Inc.*, No. 9:20-CV-184 (E.D. Tex. Aug. 12, 2021). But that decision does not change the analysis or result here, for several reasons. First and foremost, diversity jurisdiction was not asserted or addressed as a ground for removal in *Glenn*. Because removal for diversity under 28 U.S.C. § 1332 is undeniably proper, the analysis need not reach the federal officer or federal question arguments. However, defendant believes the well-reasoned decisions

ARGUMENT

I. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a).

Removal is proper under 28 U.S.C. § 1332.

The amount in controversy exceeds $75,000, exclusive of interest and costs. [*See* Pet. ¶ 28 ("Plaintiffs affirmatively state that they seek damages in excess of $1,000,000 . . . .")]

Complete diversity exists. Plaintiffs are citizens of Texas. [Pet. ¶¶ 6-12] Tyson Foods, Inc. is a corporation. For the purposes of diversity jurisdiction, a corporation is a citizen of "every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Tyson is incorporated under the laws of Delaware and has its principal place of business in Arkansas. For purposes of diversity jurisdiction, it is therefore a citizen of both Delaware and Arkansas. Because Plaintiffs are citizens of Texas, while Tyson is a citizen of Delaware and Arkansas, complete diversity exists. Removal is thus proper under 28 U.S.C. § 1332.[2]

Additionally, Removal is also proper on the independent bases described below.

II. Federal officer removal is proper under 28 U.S.C. § 1442(a)(1).

Under 28 U.S.C. § 1442(a)(1), a civil action may be removed to federal court if the action is asserted against a person acting under the direction of a federal officer:

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of the *Fields* and *Wazelle* courts confirming federal officer jurisdiction should control if the court finds it needs to consider that issue.

[2] As the named Defendant, Tyson Foods, Inc. timely removes this matter to federal court pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1442, and 1446. However, Tyson Fresh Meats, Inc. is the entity that employed Plaintiffs. Tyson Fresh Meats, Inc. is incorporated under the laws of Delaware, and its principal place of business is in South Dakota. Thus, in the event that Plaintiffs amend their pleadings to name the Tyson entity that employed them, complete diversity will also exist between Tyson Fresh Meats, Inc. and Plaintiffs.

> A civil action . . . that is against or directed to any of the following may be removed . . . :
>
> (1) The United States or any agency thereof or any officer (*or any person acting under that officer*) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . . .

28 U.S.C. § 1442(a)(1) (emphasis added).

Here, federal officer removal is proper because (1) Tyson "acted pursuant to a federal officer's directions," (2) "the charged conduct is connected or associated with an act pursuant to a federal officer's directions," (3) Tyson has "a colorable federal defense," and (4) Tyson "is a 'person' within the meaning of the statute." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020) (en banc); *see also Wazelle*, 2021 WL 2637335; *Fields*, 2021 WL 510620.

Federal Direction. On March 13, 2020, the President "proclaim[ed] that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020."[3] The federal government proceeded to devote significant effort to combating the pandemic and its potentially catastrophic effects, enlisting both public and private entities in its efforts to ensure that the rapid spread of the disease would not disrupt the nation's critical infrastructure. A particular focus of that effort was the protection of the nation's food supply.

This "critical infrastructure" designation derives from the Critical Infrastructure Protection Act passed after 9/11, *see* 42 U.S.C. § 5195c(e), which instructed the U.S. Department of Homeland Security to develop plans to protect designated "critical infrastructure" in the event of future disasters. "Food and Agriculture" is one of the sixteen recognized "sectors" of critical infrastructure and is subject to a 2013 Presidential Policy Directive intended to "advance[] a national unity of effort to

[3] https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/

strengthen and maintain secure, functioning, and resilient critical infrastructure."[4] Coordinating protection of the Food and Agriculture Sector has been assigned to the U.S. Departments of Agriculture and Health and Human Services, which have an extensive plan[5] "to protect against a disruption anywhere in the food system that would pose a serious threat to public health, safety, welfare, or to the national economy."[6]

The Defense Production Act ("DPA"), 50 U.S.C. § 4501 *et seq.*, provides the federal government with additional authority. The DPA grants the President authority to "control the general distribution of any material in the civilian market" that the President deems "a scarce and critical material to the national defense." *Id.* § 4511(b). The Critical Infrastructure Protection Act expressly cross-references the DPA and characterizes the emergency preparedness activities that both statutes contemplate as part of the "national defense." *See* 42 U.S.C. § 5195a(b). The statutes vest the President with ample authority to direct the operation of critical infrastructure like the distribution of meat and poultry to protect the national food chain—a point that the President underscored shortly after declaring a national emergency. *See Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, The White House (Mar. 18, 2020), https://bit.ly/2Nh91XZ ("We'll be invoking the Defense Production Act, just in case we need it.").

From the time of President Trump's disaster declaration on March 13, Tyson was in close contact with federal officials regarding continued operations as critical infrastructure and acting at the direction of those officials. For example, on March 15

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[4] https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil

[5] https://www.cisa.gov/critical-infrastructure-sectors

[6] https://www.cisa.gov/sites/default/files/publications/nipp-ssp-food-ag-2015-508.pdf at 13.

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