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 Carley Snider
 District Clerk
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 Potter County, Texas
 By KP Deputy

CAUSE NO. 109874-C-CV

Jamie 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; Bi §
 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, §

Plaintiffs

vs.

Ernesto Sanchez, Kevin Kinikin, and Farren §
 Fernandez §

Defendants

IN THE DISTRICT COURT OF

POTTER COUNTY, TEXAS

251st TH JUDICIAL DISTRICT**ORIGINAL PETITION**

Jamie 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; Biak 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 ("Plaintiffs") complains of Ernesto Sanchez; Kevin Kinikin; and Farren Fernandez

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 CARLEY SNIDER
 District Clerk
 Potter County, Texas
 By [Signature], Deputy

(collectively “Defendants”) and will respectfully show the Court the following:

I.

NATURE OF ACTION

1. This is an action to recover damages after Plaintiffs contracted COVID-19 while working at Tyson’s meatpacking plant in Amarillo, Texas.

II.

DISCOVERY

2. Discovery in this matter may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III.

JURISDICTION AND VENUE

3. Plaintiffs’ claims arise under the laws of Texas.

4. The Court has jurisdiction over this case because Plaintiffs seek damages within the jurisdictional limits of this Court. Additionally, Plaintiffs bring their claims under Texas state law and do not seek to make any claims that are pre-empted by federal law. Put differently, Plaintiffs allege that Defendants failed to provide them with a safe place to work and failed to follow appropriate guidelines and recommendations to avoid the spread of COVID-19.

5. Further, this case is not removable because Plaintiffs have not made any federal claims and complete diversity of citizenship is lacking because Plaintiffs and Defendants are citizens of the state of Texas.

6. Venue is proper in this County pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(3) because one or more Defendants resides in this County. Venue is also proper under Texas Civil Practice and Remedies Code Section 15.002(a)(1) because the acts or omissions

giving rise to this suit occurred in this County.

IV.

PARTIES

7. Plaintiff Jamie Wazelle is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

8. Plaintiff Tay Aung is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

9. Plaintiff Elizabeth Casel is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

10. Plaintiff Manivanh Chanthanakhone is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

11. Plaintiff Manuel Contreras is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

12. Plaintiff Rebeca Corral is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

13. Plaintiff Patricia Cossey is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at

the Amarillo, Texas facility.

14. Plaintiff Jozette Escoto is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

15. Plaintiff Cruz Garcia, Sr. is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

16. Plaintiff Sheryl Gardner is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

17. Plaintiff Denetria Gonzalez is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

18. Plaintiff Rene Gutierrez is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

19. Plaintiff Brian Hall is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

20. Plaintiff Brandon Ivory is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

21. Plaintiff Nini Aye Kayaphu is a resident of Texas. Plaintiff worked at Tyson's

Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

22. Plaintiff Ko Latt is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

23. Plaintiff Armando Lira is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

24. Plaintiff Derestia Lira is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

25. Plaintiff Mya Lira is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

26. Plaintiff Valarie Lira is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

27. Plaintiff Aung Moe is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

28. Plaintiff Biak Morris is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

29. Plaintiff Maleak Rector is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

30. Plaintiff Maricela Rios is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

31. Plaintiff Natasha Rios is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

32. Plaintiff Guadalupe Rondan is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

33. Plaintiff Miguel Rondan is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

34. Plaintiff Javier Rubio is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

35. Plaintiff Ignacio Ruiz is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

36. Plaintiff Sylvia Ruiz is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo,

Texas facility.

37. Plaintiff Mitchell Sanchez is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

38. Plaintiff Billy Shaw is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

39. Plaintiff Kyaw Soe is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

40. Plaintiff Nyein Soe is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

41. Plaintiff Thida Soe is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

42. Plaintiff Breana Solis is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

43. Plaintiff Ladonna Trull is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

44. Plaintiff Tin Soe both Individually and as Personal Representative of the Estate of

Maung Maung Tar is a resident of Texas. Plaintiff worked at Tyson's Amarillo, Texas facility and contracted COVID-19 because of the unsafe working conditions at the Amarillo, Texas facility.

45. Defendant Ernesto Sanchez is a resident of Texas and was the General Manager for the Tyson facility in Amarillo, Texas. Mr. Sanchez can be served with process at his home address of 6500 Chloe Cir, Amarillo, Texas 79119 or wherever he may be found.

46. Defendant Kevin Kinikin is a resident of Texas and was the Production Maintenance Supervisor for the Tyson facility in Amarillo, Texas. Mr. Kinikin can be served with process at his home address of 2014 Garfield Street, Amarillo, Texas 79107 or wherever he may be found.

47. Defendant Farren Fernandez is a resident of Texas and was the Human Resources Manager for the Tyson facility in Amarillo, Texas. Ms. Fernandez can be served with process at her home address of 7803 Harrington Cir, Amarillo, Texas 79121 or wherever she may be found.

V.

FACTS

48. Plaintiffs worked at the Tyson meatpacking plant in Amarillo, Texas. In 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.

49. In Texas, Governor Abbott issued a stay-at-home order for the State of Texas 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, Texas after April 2, 2020. Plaintiffs also worked at the Amarillo, Texas meatpacking plant prior to April 2, 2020.

50. Both prior to April 2, 2020, and after April 2, 2020, Tyson failed to take adequate precautions to protect the workers at its meatpacking facilities, including the Amarillo, Texas

meatpacking facility. Even when the rest of the country and the State of Texas were taking significant precautions to prevent the spread of COVID-19 even prior to April 2, 2020, Tyson did not do the same thing. And even after April 2, 2020, Tyson still required its employees to come to work and did not provide adequate precautions or protections to help protect its employees from COVID-19.

51. Defendants Ernesto Sanchez (the General Manager), Kevin Kinikin (Production Maintenance Supervisor), and Farren Fernandez (Human Resources Manager) were directly responsible for implementing a safe work environment at Tyson's Amarillo, Texas meatpacking plant.¹ These Defendants were 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, Texas meatpacking plant. Defendants Ernesto Sanchez, Kevin Kinikin, and Farren Fernandez failed to fulfill their job duties to provide a safe working environment to Plaintiffs. As a direct result of the negligence and gross negligence of Defendants, Plaintiff contracted COVID-19 at the Amarillo, Texas meatpacking plant and has experienced significant injuries as a result.

52. Thousands of Tyson employees have been exposed to COVID-19 at Tyson's meatpacking facilities. Upon information and belief, at least 7,100 Tyson employees have contracted COVID-19, and at least 24 employees have died as a result of exposure to COVID-19 at Tyson's meatpacking facilities.

53. In Texas, Tyson chose not to provide its employees with workers compensation insurance. Instead, Tyson has implemented a program called WISP or Workplace Injury Settlement Program wherein Tyson pressures employees to sign releases before providing injury

¹ Tyson Foods chose not to obtain workers compensation insurance in the State of Texas. Thus, Tyson and its agents (the named Defendants in this lawsuit) are liable to Plaintiff for her personal injuries sustained in the course and scope of her employment.

benefits. In many cases, Tyson then pays limited, if any benefits, once its employees have signed away their right to sue.

54. Tyson's conduct, effectuated through the named Defendants in this lawsuit, was negligent and grossly negligent and was the cause of the underlying incident.

VI.

CAUSES OF ACTION

A. Negligence and Gross Negligence against all Defendants.

55. Plaintiffs repeat and re-alleges each allegation contained above.

56. Defendants are negligent and grossly negligent for the following reasons:

- a. Failed to provide a safe work environment.
- b. Requiring Plaintiffs to continue working at the meatpacking plant when it was no longer safe to do so due to COVID-19;
- c. Failed to provide adequate PPE to the workers at the meatpacking plant;
- d. Failed to implement adequate precautions and social distancing at the meatpacking plant;
- e. Failed to follow guidelines set forth by the WHO and CDC with regard to COVID-19 at the meatpacking plant;
- f. Failed to warn of the dangerous conditions at the meatpacking regarding COVID-19;
- g. Failure to properly train Tyson employees at the meatpacking plant;
- h. Failure to provide adequate medical treatment;
- i. Allowed and required individuals who were infected with COVID-19 to continue to work at the meatpacking plant infecting other individuals; and

j. Other acts deemed negligent and grossly negligent.

57. Defendants owed Plaintiffs a legal duty of the foregoing.

58. Defendants breached these duties, and as a direct and proximate result of Defendants' breaches of duty caused serious bodily injury to Plaintiffs, resulting in the following damages: physical pain, mental anguish, physical impairment, past and future medical expenses, loss of earning capacity, and loss of services. Because of the severity and degree of Plaintiffs' injuries, Plaintiffs' will incur significant future medical expenses as a result of Defendants' negligent and grossly negligent conduct.

59. Further, Defendants are liable for their grossly negligent conduct. Defendants' actions and/or omissions, when viewed objectively, exposed Plaintiffs to an extreme degree of risk with no regard for the probability and magnitude of the potential harm. Defendants also had actual, subjective awareness of the risk involved, yet chose to proceed in conscious indifference to the rights, safety, and welfare of Plaintiffs. Thus, Plaintiffs are entitled to exemplary damages against Defendants.

B. Wrongful Death and Survival Claims Against Defendants by Tin Soe both Individually and as the Personal Representative of the Estate of Maung Maung Tar.

60. Plaintiff Tin Soe, Individually and as the Personal Representative of the Estate of Maung Maung Tar, repeats and re-alleges each allegation contained above.

61. As a wrongful death beneficiary, Tin Soe, Individually, as the Personal Representative of the Estate of Maung Maung Tar, seeks to recover all damages available under Texas law. The Defendants had the above referenced duties. Defendants breached those duties and Defendants' breaches were the cause in fact and the proximate cause of Decedent's death and Plaintiffs' injuries. These acts of negligence and gross negligence also led to Plaintiffs' suffering severe injury. Plaintiffs are now entitled to recover for their injuries, which give rise to both

wrongful death and survival claims.

62. As the Personal Representative of the Estate of Maung Maung Tar, Tin Soe seeks to recover damages for the survival action under Tex Civ. Prac. & Rem. Code §71.021. As a result of Defendants' negligence and gross negligence, Decedent suffered severe physical injuries that ultimately led to his death. The Defendants had the above referenced duties. Defendants breached those duties and Defendants' breaches were the cause in fact and the proximate cause of Decedent's death. Furthermore, Defendants' actions were done with reckless disregard to a substantial risk of severe bodily injury. As such, Plaintiffs are entitled to exemplary damages on behalf of the estate of Decedent.

VII.

DAMAGES

63. As a result of said occurrences, Plaintiffs sustained severe injuries to their bodies, lungs, and respiratory system in general, which resulted in physical pain, mental anguish, and other medical problems. Plaintiffs have sustained severe pain, physical impairment, discomfort, mental anguish, and distress. In all reasonable probability, Plaintiffs' physical pain, physical impairment and mental anguish will continue indefinitely.

64. Plaintiffs are also entitled to punitive damages because the aforementioned actions of Defendants were grossly negligent. Plaintiffs' injuries were caused by malicious, willful, reckless, or wanton acts or omissions of Defendants, or alternatively the gross negligence of Defendants' employees, agents or representatives.

VIII.

JURY TRIAL

65. Plaintiffs hereby requests a trial by jury on all claims and submits her jury fee

herewith.

IX.

PRAYER

66. Plaintiffs pray that this citation issue and be served upon Defendants in a form and manner prescribed by law, requiring Defendants appear and answer, and that upon final hearing, Plaintiffs have judgment against Defendants in a total sum in excess of the minimum jurisdictional limits of this Court, plus pre-judgment and post-judgment interests, all costs of Court, and all such other relief to which Plaintiffs show themselves justly entitled. As required by Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs affirmatively state that they seek damages in excess of \$1,000,000 and prays for relief and judgment, as follows:

- a. Compensatory damages against Defendants;
- b. Actual damages;
- c. Consequential damages;
- d. Pain and suffering;
- e. Exemplary damages;
- f. Past and future mental anguish;
- g. Past and future impairment;
- h. Past and figure disfigurement;
- i. Loss of wages past and future;
- j. Loss of earning capacity;
- k. All wrongful death damages allowed for under Texas law;
- l. All survivorship damages allowed for under Texas law;
- m. Funeral expenses;

- n. Interest on damages (pre- and post-judgment) in accordance with law;
- o. Plaintiffs' reasonable attorneys' fees;
- p. Costs of court;
- q. Expert witness fees;
- r. Costs of copies of depositions; and
- s. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold
SBN: 24036150
karnold@arnolditkin.com
Caj Boatright
SBN: 24036237
cboatright@arnolditkin.com
Roland Christensen
SBN: 24101222
rchristensen@arnolditkin.com
Joseph McGowin
SBN: 24117268
jmcgowin@arnolditkin.com
Claire Traver
SNB: 24115871
ctraver@arnolditkin.com
6009 Memorial Drive
Houston, Texas 77007
Tel: 713.222.3800
Fax: 713.222.3850
kbateam@arnolditkin.com
e-service@arnolditkin.com

ATTORNEYS FOR PLAINTIFFS



I, Carley Snider, Clerk of the District
Courts and County Courts at Law, in and
for Potter County, Texas, do hereby certify
that the foregoing instrument is a correct
copy of the original on file in this office
ATTESTED this 17 day of August 2020
By Carley Snider Deputy

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CARLEY SNIDER
District Clerk
Potter County, Texas
By Carley Snider, Deputy