

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**FRANCISCO JAVIER DOMINGUEZ,  
KELLY RESTAURANT GROUP, AND  
KANSAS RESTAURANT & HOSPITALITY  
ASSOCIATION,**

**Plaintiffs,**

**v.**

**MCLANE COMPANY, INC. AND  
JOHN DOE,**

**Defendants.**

**Case No. 18-2125-JWL-GLR**

**MEMORANDUM AND ORDER**

The parties have filed a Stipulated Motion for Substitution of Parties Under Federal Rules of Civil Procedure 25 (ECF 7). The parties ask the Court to substitute both defendants and to have Francisco Javier Dominguez as the singular plaintiff. The parties cite Fed. R. Civ. P. 25 as their authority. For the reasons stated below, the Court grants the motion, but pursuant to Fed. R. Civ. P. 21.

Plaintiffs filed this action in state court. Defendants removed it to this Court on March 16, 2018, invoking diversity jurisdiction. Plaintiff Dominguez is a resident of Kansas. Defendant McLane Company, Inc. is a licensed business entity in Oklahoma. The parties propose to substitute McLane Food Service Distribution, Inc. f/k/a Meadowbrook Meat Company, a North Carolina corporation with its principal place of business in Texas, in place of McLane Company, Inc. The parties also propose to substitute Lonnie Hyde, a resident of Oklahoma, in place of John Doe.

The parties suggest Fed. R. Civ. P. 25 as the authority for the proposed substitutions. But Rule 25 provides for the substitution of a party in only four circumstances: death, incompetency,

transfer of interest, or death or separation of public officers from office.<sup>1</sup> None of those situations appears to apply here.

Fed. R. Civ. P. 21, however, authorizes the Court to add or drop a party:

“On motion or on its own, the court may at any time, on just terms, add or drop a party.”

“Although none of the parties addresses this issue, it is clear that the Court must focus its analysis on the propriety of substitution under Rule 21.”<sup>2</sup> Some courts have held Rule 21 does not authorize substitutions, but our Court has expressly held that Rule 21 “empowers courts to add or substitute parties at various stages of litigation.”<sup>3</sup> Because the parties are in agreement, and Rule 21 provides adequate authority, the Court grants their joint motion for substitution. Lonnie Hyde is substituted for Defendant John Doe. McLane Food Service Distribution, Inc. f/k/a Meadowbrook Meat Company is substituted for Defendant McLane Company, Inc. Kelly Restaurant Group and Kansas Restaurant & Hospitality Association are no longer plaintiffs.

**IT IS THEREFORE ORDERED** that the Stipulated Motion for Substitution of Parties Under Federal Rules of Civil Procedure 25 (ECF 7) is **granted.**, as hereinabove set forth.

Dated April 5, 2018, at Kansas City, Kansas.

S/ Gerald L. Rushfelt  
Gerald L. Rushfelt  
U.S. Magistrate Judge

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<sup>1</sup> Fed. R. Civ. P. 25.

<sup>2</sup> *Brown v. Yellow Transp., Inc.*, No. 07-2556-JWL-DJW, 2008 WL 1995075, at \*2 (D. Kan. May 6, 2008).

<sup>3</sup> *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1284 (D. Kan. 2002).