

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ELIZABETH GARLINGTON)
)
Plaintiff,)
)
v.)
)
DEODIS JONES, JR., ET AL.)
)
Defendants.)

Case No. 6:21-cv-03135-RK

ORDER

Before the Court is Defendant ASF Intermodal, LLC’s (“ASF”) motion to dismiss Count II of Plaintiff’s Petition. (Doc. 19.) The motion is fully briefed (Docs. 20, 22, 23) and ready for decision. For the reasons set forth below, the motion is **GRANTED in part and DENIED in part.**

Discussion

ASF’s reply in support of its motion provides this helpful summary of the parties’ briefing on this matter:

Plaintiff admits and acknowledges that since Defendant has admitted respondeat superior liability, all claims of direct liability are now moot under Missouri law. See Document No. 22 (Plaintiff’s Suggestions in Opposition). However, Plaintiff argues that Count II should not be dismissed as it also alleges respondeat superior liability against Defendant ASF. Defendant acknowledges that Count II contains numerous claims against ASF including vicarious liability, negligent hiring, and negligent training. Given that Plaintiff has conceded that all of their claims aside from vicarious liability are moot, Defendant is agreeable to all allegations of direct liability being struck from the pleading in lieu of wholly dismissing the Count. For this reason, Defendant requests that Paragraph 2 of Count II of Plaintiff’s Petition be dismissed as this paragraph alleges negligent training and supervision which Plaintiff has agreed are moot and Plaintiff is barred from proceeding under these theories.

(Doc. 23, p. 1.)

Conclusion

Accordingly, after careful consideration and considering the parties' positions reflected above, the Court **ORDERS:**

- (1) Paragraph 2 of Count II of Plaintiff's Petition is **STRICKEN**.
- (2) Defendant ASF's motion to dismiss is **DENIED** in all other respects.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: September 9, 2021

