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FELLOW

May 19, 2020

*Via Online Submission*

California Labor and Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, CA 95814

California Division of Occupational Safety & Health  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

To LWDA and Cal/OSHA:

RE: Notice of Labor Law Violations  
California Labor Code §§2699.3(b)(2)(B)(ii), (c), 6300 et seq.  
2040 N. First Street in San Jose

This is a PAGA notice submitted pursuant to Labor Code §2699.3(b)(2)(B)(ii), which authorizes aggrieved employees to pursue PAGA civil penalties under the provisions set forth in Labor Code §2699.3(c) where the Division of Occupational Safety and Health (“Division”) has failed to inspect or investigate a worker’s complaint alleging violations of Labor Code §§6300, et seq.

On or about April 6, 2020, aggrieved employees Maria E. Ruiz Bonilla and Ana Martinez (“Complainants” or “Employees”), on behalf of themselves and other similarly situated aggrieved employees including all other crew members and non-supervisory employees employed by McDonald’s Restaurants of California, Inc. (“McDonald’s” or “Employer”) at the McDonald’s corporate-owned restaurant at 2040 N. First Street in San Jose, California where they worked, filed a complaint with Cal/OSHA alleging that their place of employment was unsafe and posed an imminent danger to their health and welfare. Employees’ complaint, which

is attached hereto as Exhibit A and incorporated herein by reference, alleged that McDonald's failure to comply with its health and safety obligations under applicable laws was willful and constituted a "serious violation" within the meaning of Labor Code §6309(a) because the conditions McDonald's created and allowed to continue as set forth in that complaint established a "realistic possibility that death or serious physical harm could result from the actual hazard created by a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use in a place of employment."

The Division did not respond to the aggrieved employees' complaint within the statutory three-day response period mandated by Labor Code §6309 and it has still not responded to that complaint. Pursuant to Labor Code §2699.3(b)(2)(B)(ii), this notice is therefore timely pursuant to Labor Code §2699.3(c). As of today's date, McDonald's still has not cured the violations giving rise to this notice and further enumerated below. *See* Labor Code §2699.3(c)(2)(A). Complainants therefore seek to recover on behalf of the State of California and all aggrieved employees all civil penalties made recoverable by PAGA.

Complainants were each employed by McDonald's on and after the beginning of the PAGA limitations period on May 19, 2019, including during the time period on and after McDonald's was aware, or should reasonably have become aware, that the COVID-19 virus posed a substantial risk of great bodily injury or death to its employees and customers and that it had a legal duty to maintain a safe and healthy work environment for all aggrieved employees and others who were or who may have been infected or exposed to infection from the COVID-19 virus.

As further set forth in the attached complaint, McDonald's knowingly and willfully required Complainants and other aggrieved employees to perform their work in an unsafe manner and under hazardous conditions, in violation of its legal obligations and the public policy of the State of California, including its obligation to provide employees with a safe and healthful workplace pursuant to Labor Code §§6400 (safe employment and place), 6401 (duty to furnish safety devices and safeguards), 6402 (prohibition against requiring or permitting employees to be in unsafe places), 6403 (prohibition against failing or neglecting to provide safety devices and safeguards), 6404 (prohibition against occupying or maintaining any place of employment that is not safe and healthful), 6406 (prohibition against removal or interference with safety devices or methods), and 6407 (compliance with standards and rules required), each of which are designed to benefit employees and the public at large.

The workplace conditions and practices at the McDonald's restaurant where Complainants were employed constituted and continues to constitute a hazard or danger that could reasonably be expected to cause death or serious physical harm. Those conditions include but are not limited to McDonald's knowing failure to: require reasonably safe physical distancing in work areas and public areas, by customers as well as employees; provide adequate training to employees concerning physical distancing and the use of masks or gloves to minimize the spread of the virus; provide sufficient breaks to enable adequate handwashing and other

personal hygiene practices by employees; provide adequate amounts of hand sanitizer and soap to employees; provide appropriate signage, including to ensure appropriate physical distancing by employees and customers; conduct appropriate contact tracing of all persons known or suspected to have been infected with the COVID-19 virus while physically present at the restaurant, including employees; provide adequate warnings and instruction to persons known or suspected to have come in contact with infected employees and/or customers; require self-quarantining, with pay or sick pay, of all employees known or suspected to have come into contact with persons infected with COVID-19 or showing apparent symptoms of such infection; provide adequate symptom screening and temperature testing of all employees; instruct employees to stay home when symptomatic; restrict common use by employees of physical equipment such as telephones, headsets, terminals, keyboards, bump bars, trays, and drink dispensers without ensuring adequate sanitization of such equipment between uses; and conduct *actual* and not just superficial cleaning of those areas on a regular basis.

Employees repeatedly complained to their managers about these hazards and McDonald's failure to fix them. For example, Ms. Martinez's manager told her that it was not necessary for crew members to wear gloves; took no precautions to protect co-workers or customers when Ms. Martinez and co-worker Maria Garcia exhibited symptoms consistent with COVID-19 at work; and continue to allow the store's bathrooms to be used by the public without conducting regular sanitizing and deep cleaning, even though workers have recently found needles, bugs, and blood in that bathroom. McDonald's managers repeatedly observed these hazards and ignored them. Management even reduced orders for routine deliveries of protective supplies.

McDonald's willful misconduct and flagrant disregard of its duties to maintain a safe and healthful workplace under the Labor Code and the California Occupational Health and Safety Act endanger McDonald's employees and their family members. Yet McDonald's still fails to comply with the most fundamental requirements required to provide a safe and healthful work environment during the current pandemic, as further set forth above.

Please contact the undersigned if you have any questions or concerns.

Sincerely,

Michael Rubin  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
[mrubin@altber.com](mailto:mrubin@altber.com)  
(415) 421-7151 x311

Lauren Teukolsky  
Teukolsky Law, A Professional Corporation

Notice of Labor Law Violations

May 19, 2020

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201 S. Lake Ave., Ste. 305

Pasadena, CA 91101

[lauren@teuklaw.com](mailto:lauren@teuklaw.com)

(626) 522-8982

By:           /s/ Michael Rubin  
Counsel for Complainants

cc: McDonald's Restaurants of California, Inc.  
110 N. Carpenter Street  
Chicago, IL 60607  
***Via Certified mail***

McDonald's Restaurants of California, Inc.  
2040 N. First Street  
San Jose, CA 95131  
***Via Certified mail***

# **EXHIBIT A**

Fight For \$15 Bay Area

April 6, 2022

Cal/OSHA Oakland District Office  
Kelly Tatum, District Manager  
39141 Civic Center Dr., Ste. 310  
Fremont, CA 94538

phone: (510) 794-2521  
email: [DOSHfremont@dir.ca.gov](mailto:DOSHfremont@dir.ca.gov)

RE: Formal employee Health and Safety Complaint about Imminent Danger hazards from COVID19

McDonald's, 2040 N. First St., San Jose, CA 95131  
Mohammed Hassan, regional manager, 323-905-4250.  
Meryl Queen, Store Manager, 408-429-0012

Dear Ms. Tatum,

As current employees of McDonalds, we are filing this Complaint about Serious and Imminent hazards and violations.

We request that CalOSHA conduct an immediate on-site inspection of our workplace at the address listed above, as required by the California Labor Code 6309.a ("... the division shall investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation...").

CalOSHA Policy and Procedure C-7: Complaint Evaluation Sections D.1 also says:

"1. Imminent Hazard Complaint

a. A complaint alleging that any condition or practice in any place of employment constitutes a hazard or danger which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through regular enforcement procedures is an imminent hazard complaint, regardless of source.

NOTE 1: For health hazards, exposure to the toxic substance or other hazard must cause harm to such a degree as to shorten life or be immediately dangerous to life and health (IDLH), or cause substantial reduction in physical or mental efficiency or health, even though the resulting harm may not manifest itself immediately.

b. Every effort shall be made to investigate all the imminent hazard complaints on the same day that the complaints are received."

The conditions in our store pose an imminent danger to our health and that of our coworkers, because frequent lack of gloves, soap and hand sanitizer; the fact that we are in very frequent contact with the general public; and the company's failure to create an effective social distancing system for workers and customers. You will see these conditions best if you inspect during the busy lunchtime hours.

P&P C-7 also requires in Section E.3 that any Formal Complaints "... shall be investigated by a physical inspection of the subject place of employment within three working days...").

These hazards are also a violation of the company's stated written policies on food safety, and according to McDonalds pose a hazard as well to customers from bacterial contamination of the food served in the restaurant:

"Viruses are the most common cause of food-borne illnesses in the US.  
**You can prevent bacteria and viruses from getting on food by:**

- Washing your hands properly.
- Staying home when you are sick.
- Wearing disposable gloves.
- Using clean, sanitizer-soaked towels to clean your work area.
- Handling food according to McDonald's procedures.

**"Proper and frequent hand washing is the key activity in promoting good food-handling procedures and serving safe food.**

**Hand washing is required At least once every hour."**

**"You can prevent cross contamination by:**

- Wearing blue disposable gloves when handling raw products at the grill or fried products stations.
- Washing your hands properly.

**"Clear or white disposable gloves need to be worn for any food preparation activities where cooked or ready-to-eat food is touched with your hands."**

We often are missing either blue or white/clear gloves.

#### Willful violations

We have repeatedly complained to our managers Mohammed Hassan and Meryl Queen about these hazards and their failure to fix them. They have repeatedly observed these hazards and flatly ignored these violations, even though some of these hazards also violate McDonald's own rules for food and worker safety. In fact, we understand that Mr. Hassan has reduced his orders for routine deliveries of these essential protective equipment and supplies.

Because both Mr. Hassan and Ms. Queen are well aware of these hazards and failed to make reasonable efforts to fix them, McDonald's has willfully violated these standards.

Mr. Hassan's failures to protect workers and customers may be a hazard in more than one McDonald's store, because he is responsible for a few more stores other stores in the San Jose area as well.

These hazards are willful violations of specific CalOSHA standards including, but not limited to:

- 3203 - Mandatory Injury/Illness Prevention Program

Employees are required to serve food directly to customers from the general public without any required social distancing. McDonalds also fails to provide an adequate supply of gloves, hand soap and hand sanitizer, in violation of the company's own rules requiring workers to wash their hands and change their gloves on a frequent schedule. (See attached McDonald's Training Observation Safety Checklist, May 2013.

The company has failed to enforce social distancing within the working areas of the store, like the kitchen.

This hazard is aggravated by the fact that workers are required to use other detergents and cleaning agents for food sanitation purposes, exposing them to harsher detergents unsuitable for exposed hands.

McDonalds and its supervisors have failed to 1) evaluate this hazard, 2) establish procedures to investigate injuries, 3) take action to fix hazards, and 4) train workers about the hazard when assigned to hazardous tasks – all requirements of the Injury/Illness Prevention Program Standard.

We believe that it is also possible to enforce a 6-foot distancing rule between employees inside the store while still maintaining food service for customers.

One feasible method to fix these hazards is to receive all food orders through the remote ordering equipment and applications, and then provide all food through the available drive-through windows, as the company does during nighttime hours, minimizing any close contact with customers.

But for any situations where it is not feasible to provide food only through the drive-through windows, it is also possible to erect partitions to better separate customers from cashiers and other workers behind the counter, similar to the windows that protect workers from customers at the

drive-through windows. For instance, enclosed is a photo of this kind of partition at a McDonalds in the Walmart, 777 Story Road, San Jose.

- 3366 – Washing facilities. The store does not have a regular supply of hand soap for washing hands. The manager has failed to order adequate supplies of proper hand soap from its regular supplier. Instead, the company is providing workers only with the heavy-duty cleaning detergent Ultra Ajax Triple Action, which is a hand irritant.
- 3380 and 3384 – Personal Protective Equipment. Employees are not provided with appropriate personal protective equipment to protect their hands from contact with potentially infected customers. When PPE is provided, it is not properly maintained so that employees are required to perform cooking, food preparation, equipment cleaning and or maintenance and other tasks with PPE that is worn out or has holes. This defective PPE is not capable of protecting employees from the hazard of coming into contact with surfaces contaminated with either viruses or bacteria capable of causing either worker or customer illnesses.
- 5194 – Employees are exposed to chemical hazards causing skin irritation from the detergent.

### EMPLOYEE REPRESENTATIVES

We designate the Fight for \$15 Bay Area as our designated employee representative in all contacts with CalOSHA and the company for this Complaint and in regard to any resulting Citations. We also designate Maria Maldonado from the Fight for \$15 Bay Area as our designated employee representative.

You can reach Ms. Maldonado at the following address:  
Fight for \$15 Bay Area  
2302 Zanker Rd  
San Jose, Ca 95131  
408-477-5180

In that capacity, Ms. Maldonado will be happy to provide you with any information which will assist CalOSHA in conducting its inspection. In addition, she will be happy to arrange for a CalOSHA inspector to meet privately, at a site away from the workplace, with the complaining workers and others to discuss the hazards at this workplace. Such a meeting can be held either before or after the physical inspection of the work site.

The Complainants have designated Maria Elena Ruiz Bonilla to serve as the Walkaround Rep during the on-site inspection.

Finally, we request that CalOSHA include Ms. Maldonado as the designated representative of the complaining workers either in the Opening Conference held with the employer, or if the employer insists on separate conferences, that OSHA hold an Opening Conference with her and any available the affected employees. We also request that you schedule any Final Closing Conference to allow Ms. Maldonado and affected workers to participate or that you schedule a separate meeting with us if the employer objects to our participation in the closing conference.

When Cal OSHA conducts an inspection, we request that you keep confidential the name and contact information of each complaining worker to minimize the chances for employer retaliation against them. Some of the workers are concerned that once their employer learns that an OSHA investigation has been requested, the employer may try to intimidate employees into misrepresenting the situation in the store or retaliate against the workers who filed complaints with OSHA. To minimize the chances of such retaliation, we suggest that OSHA conduct off-site interviews of affected workers. We will be happy to arrange such meetings, either before the inspection begins or while it is in progress.

### Violations of the California Labor Code

In addition to violating these specific CalOSHA standards or other standards, the company is also violating the following sections of the California Labor Code:

6400 - (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

6401 - Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

6402 - No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

6403 - No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

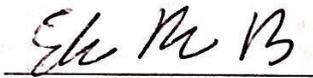
6404 - No employer shall occupy or maintain any place of employment that is not safe and healthful.

6406 - No person shall do any of the following:

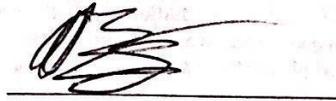
- (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Thank you for your attention to this serious matter.

Sincerely,



Maria E. Ruiz Bonilla



Ana Martinez



Enc.

McDonald's rules on food Safety and gloves, and hand washing.

Photo of partition

Photo of Ajax Detergent.