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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

RE: Notice of Labor Law Violations,  
California Labor Code §§2699.3(b)(2)(B)(ii), (c), 6300 et seq.  
2838 Crenshaw Boulevard in Los Angeles

To LWDA and Cal/OSHA:

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 employee Bartolomé Pérez (“Complainant” or “Employee”), on behalf of himself and other similarly situated aggrieved employees, including all other crew members and non-supervisory employees employed by McDonald’s Restaurants of California, Inc. and Nicole Enearu (collectively, “McDonald’s” or “Employer”) at the McDonald’s restaurant at 2838 Crenshaw Boulevard in Los Angeles, California where he has worked for the past 30 years, filed a complaint with Cal/OSHA alleging that his place of employment was unsafe and posed an imminent danger to his and his co-workers’ health and welfare. Employee’s 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 employee's complaint within the statutory three-day response period mandated by Labor Code §6309 and 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 alleged violations giving rise to this notice and as further enumerated below. *See* Labor Code §2699.3(c)(2)(A). Complainant therefore seeks to recover on behalf of the State of California and all aggrieved employees all civil penalties made recoverable under PAGA.

Complainant was employed by McDonald's throughout the PAGA limitations period, including during the time when and after McDonald's became 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 Complainant and other aggrieved employees to perform 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 Complainant was 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, including employees who regularly walk in and out of the kitchen, service areas, customer areas, and outside areas to clean up and deposit trash but who do not sanitize or change gloves

upon entering and leaving; 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 at least 14 days of 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* disinfecting and cleaning and not just superficial cleaning of those areas on a regular basis; and clean and disinfect bathrooms regularly by persons other than those who are just beginning their shifts.

At least three employees at this location became infected with the COVID-19 virus in March and April 2020, and others may be infected now as well. The store's managers knew that those employees were infected at different times and exposed different workers to their infections, but only closed the store once and have not comprehensively deep-cleaned it. McDonald's failed to promptly inform all employees who shared equipment and otherwise came in contact with the infected employees that those co-workers may have been exposed – contrary to well-established prophylactic principles and orders from the Los Angeles County Department of Public Health. At least one of those workers who was not informed of the prior infections also became infected with COVID-19.

McDonald's does not provide pay or sick pay to potentially infected workers who must quarantine, despite knowing that practice imposes tremendous economic pressure on its low-wage workforce to continue working under the unsafe and hazardous conditions described above and in the attached complaint, at great danger to themselves and others. McDonald's also routinely assigns at least one of its employees who regularly works at 2838 Crenshaw, and perhaps others, to perform work at multiple commonly owned McDonald's restaurants, including on information and belief, at the McDonald's restaurants at: 901 S Long Beach Blvd, Compton; 1733 Alameda St, Compton; 1160 E Rosecrans Ave, Los Angeles; 1118 Slauson Ave, Los Angeles; 1900 W Slauson Ave, Los Angeles; 4348 Sunset Blvd, Los Angeles; 7123 Crenshaw Blvd, Los Angeles; and 10011 S Avalon Blvd, Los Angeles. This greatly increased the risk of spreading the COVID-19 infection among co-workers and customers.

Complainant complained to his managers about the above hazards and McDonald's failure to fix them. The managers repeatedly observed these hazards and ignored them.

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 endangers 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)  
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By:           /s/ Michael Rubin  
Counsel for Complainants

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

Nicole R. Enearu  
2838 Crenshaw Avenue  
Los Angeles, CA 90016  
***Via Certified mail***

# **EXHIBIT A**

Via email:  
[DOSHLA@dir.ca.gov](mailto:DOSHLA@dir.ca.gov)

April 6, 2020

Victor Copelan, District Manager  
320 West 4th Street, Suite 820  
Los Angeles, CA 90013  
phone:(213) 576-7451 fax:(213)  
576-7461  
email:[DOSHLA@dir.ca.gov](mailto:DOSHLA@dir.ca.gov)

RE: Formal employee Health and Safety Complaint about Imminent Danger hazards from  
COVID19 McDonald's, 2838 Crenshaw, Los Angeles, CA 90016  
Jose, Store Manager,  
323-731-0046

Dear Mr. Copelan,

As a current employee of McDonalds, I am filing this Complaint about Serious and Imminent hazards and violations.

I request that CalOSHA conduct an immediate on-site inspection of my 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. Last week, a worker was identified as having COVID19, but the managers did not inform all the workers who were in the store during that week and might have had either direct or indirect contact with the sick worker. The manager told one worker to self-quarantine, but did not inform the other workers. We are still expected to come to work.

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Instead, we have demanded that the company instruct all the workers who were exposed either directly or indirectly to self-quarantine, with full pay for the time of self-quarantine. Until the company absolutely assures that the workers who had that direct or indirect contact are removed from the store, the store is still a possible source of infection.

We request that CalOSHA order McDonald's to comply with the public health directives and remove from the workplace all workers who were working in the store with the employee, or otherwise exposed to employees who were working with the employee, who was confirmed as a victim of COVID.

Also, any other workers who are employed at the store are exposed to contact with the public face imminent hazards because of frequent lack hand sanitizer; and the company's failure to create an effective social distancing system for workers in the kitchen. 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.

"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."

Clear or white disposable gloves should only be worn at the assembly or salad prep areas. You must remove and discard clear or white disposable gloves: - If, while working at the station, your gloves develop tears or holes or you touch your face or hair, or you have to pick something up off of the floor. - When you leave the assembly or salad prep areas to do other tasks such as mopping or cleaning, handling garbage, or retrieving stock from the refrigerator or store room.”

Managers and workers routinely use the same gloves in the food preparation areas after they wear the gloves outside the store to deliver orders to customers.

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Willful violations I have complained to our manager Jose about these hazards and the failure to fix them. They have repeatedly observed these hazards and ignored these violations, even though it also violates McDonald's own rules for food and worker safety.

Because Jose is well aware of these hazards and failed to make reasonable efforts to fix them, McDonald's has willfully violated these standards.

These hazards are willful violations of specific CalOSHA standards. Some of them are also “Repeat” violations, because CalOSHA cited this store in 2015 for violating some of the same standards. These violations include, but are not limited to:

- 3203 - Mandatory Injury/Illness Prevention Program McDonalds fails to provide an adequate supply hand sanitizer. It also fails to make sure that workers and managers comply with 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.

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.

This is a REPEATED violation, since Cal OSHA cited this store on August 3, 2015 for violating Standard 3203 in part for failing to fix problems with required gloves for food preparation workers, in inspection #1046722. This violation became a final order because the company never appealed the violation.

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.

- 3380 and 3384 – Personal Protective Equipment. Managers and workers use gloves to deliver orders and prepare food, which fails to protect employees from the hazard of coming into contact with surfaces contaminated with either viruses or bacteria capable of causing either worker or customer illnesses. This is a REPEATED violation, since CalOSHA cited this store on August 3, 2015 for violating Standard 3380 in part for failing to fix problems with required gloves for food preparation workers, in inspection #1046722. This violation became a final order because the company never appealed the violation.

#### EMPLOYEE REPRESENTATIVES

I designate the Fight for \$15 LA as the designated employee representative in all contacts with CalOSHA and the company for this Complaint and in regard to any resulting Citations. I also

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designate Hugo Aleman and Maythe Figueroa from the Fight for \$15 LA as our designated employee representative.

You can reach Mr. Aleman at the following address:  
Fight for \$15 LA 1545 Wilshire Blvd., Suite 305  
Los Angeles, CA 90017 510-978-5794

And Ms. Figueroa at 323-332-8045.

In that capacity, Ms. Figueroa 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.

Finally, I request that CalOSHA include Mr. Aleman or Ms. Figueroa as the designated

representatives 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. I also request that you schedule any Final Closing Conference to allow Mr. Aleman or Ms. Figueroa 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, I request that you keep confidential the name and contact information of every worker you interview 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.

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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

,

---

Bartolome Perez 



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