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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.  
950 W. Floral Drive in Monterey Park, California 91754-6203

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 9, 2020, aggrieved employees Angelica Hernandez, Laura Pozos, and Griselda Esparza (“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 950 W. Floral Drive in Monterey Park, California 91754-6203 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 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 start of the PAGA limitations period on May 18, 2019, including during the time period 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 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), 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.

McDonald's employee Sonia Betancourth, who had worked for McDonald's for 18 years, including for the last several years at the 950 W. Floral Avenue location, was infected with the COVID-19 virus in mid- to late-March 2020. She called in sick on March 29, but was permitted to return to work on the morning of March 30 despite exhibiting known COVID-19 symptoms (including headaches, fatigue, fever, chills, and aching bones) where McDonald's managers caused her to come into direct contact with numerous co-workers, several of whom subsequently developed COVID-19 symptoms as well. Managers knew that Ms. Betancourth was so ill that she left work early on March 30, but did not provide a satisfactory answer when co-worker Angelica Hernandez asked the managers on the morning of March 30 why the store was allowing Ms. Betancourth to be at work.

Even though Ms. Betancourth and a co-worker who also worked the March 30 morning shift complained that morning about feeling ill, McDonald's, including through store manager Robert Ruiz, did not make any effort to close the restaurant, to isolate those employees, to provide them paid leave, to give them or their co-workers and customers additional masks or gloves, to immediately sanitize any surface that they touched, to provide warnings to the co-workers or customers with whom they interacted, to implement symptom screening measures for employees so that they would not work while sick, or otherwise to take the reasonably necessary precautions that McDonald's should have taken minimize the enormous risk of community spread among co-workers, customers, and their families.

Ms. Betancourth subsequently tested positive for COVID-19, was hospitalized and placed on a ventilator after she became unable to breathe without assistance. She remained in a coma and on the brink of death for nearly a month. As a direct and foreseeable result of 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, many other McDonald's employees and, in turn, their family members were unnecessarily exposed to COVID-19 and developed COVID-19 symptoms as well.

Even after McDonald's decided to inform *some* of the employees who shared equipment and otherwise came in contact with Ms. Betancourth and other infected employees that they may have been exposed, McDonald's declared – contrary to well-established prophylactic principles and orders from the Los Angeles County Department of Public Health – that those employees need only self-quarantine for four to five days, rather than the 14 day *minimum* that it should have required. McDonald's also pressured all employees to return to its unsafe workplace by refusing to provide pay or sick to those workers.

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

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Teukolsky Law, A Professional Corporation  
201 S. Lake Ave., Ste. 305  
Pasadena, CA 91101  
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(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***

Robert Ruiz, Manager  
McDonald's Restaurants of California, Inc.  
950 W. Floral Avenue  
Monterey Park, CA 91754-6203  
***Via Certified mail***

# **EXHIBIT A**

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**OHSA Complaint - Floral**

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**Maythe Figueroa** <maythe.figueroa@thefightfor15.org>

Thu, Apr 16, 2020 at 1:18 PM

To: DOSHLA@dir.ca.gov

Cc: Hugo Aleman &lt;hugo.aleman@thefightfor15.org&gt;

Bcc: adam.weisberg@seiu.org

Dear Mr. Copelan,

I am sending this on behalf of Angelica Hernandez and her coworkers Laura Pozos and Griselda Esparaza, to confirm that you received it. She does not have an email address or a printer. Ms. Hernandez will call you at your office number below, to confirm, and she has designated me as a representative.

Thank you,

Maythe Figueroa

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

April 9, 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, 950 W. Floral Dr., Monterrey Park, CA 91754

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.

### Conditions in the store

This store is owned by McDonald's Corporation. Sometime this week, a worker was identified as having COVID19. I had last worked with her on March 30 when she was sent home because she was obviously sick. I don't know when she was tested positive, but the supervisors did not contact me until yesterday.

The managers then told me that she is positive for COVID, and is in a hospital on a ventilator.

The supervisors also told me that there were either 3 or 4 other workers who were in the store during that March 30 shift, and needed to self-quarantine, but I do not know if they have informed the other workers.

The supervisors also told me while they would pay the workers who were exposed and are self-quarantining, but that the quarantine would only last until April 13, even though some of those workers continued to work together until today

The supervisors yesterday told me that we are still expected to come to work on April 13.

Instead, we have demanded that the company instruct all the workers who were exposed either directly or indirectly (including the people who came to work after March 30) 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 we frequently 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...").

### Willful violations

McDonald's Corp. has known about these hazards, including the lack of feasible social distancing in the kitchen and the need to close the store for disinfection, but failed to fix them.

Because the company is well aware of this hazards and failed to make reasonable efforts to fix them, McDonald's has willfully violated the California Labor Code and CalOSHA standards.

-  
These hazards are willful violations of specific CalOSHA standards. These violations include, but are not limited to:

- 3203 - Mandatory Injury/Illness Prevention Program

1. McDonald's has failed to properly assure preventive isolation for its employees with direct or indirect exposure to the worker who tested positive. The [LA County DPH Health Officer Order FAQ's of March 25](#) says the following regarding quarantine guidance for "close contacts to COVID":

**“Why am I being asked to self-quarantine?”**

You have been in close contact with someone who has Coronavirus Disease 2019 (COVID-19) and even though you feel well now, it is possible that you are also infected. It can take 2 – 14 days to show symptoms, so we may not know for up to 14 days if you are infected or not. You have been asked to self-quarantine in case you are infected so that you don't pass on the infection to anyone else. It may turn out that you are not infected but it is too soon to tell.

This is provided for people who have "close contact" at home. But it also provides employers with the information they need to apply it themselves to their employees. In our case, it shows that any of us who worked on March 30 might have been infected last week after March 30 and been the source of infection for other workers in the store anytime after

March 30, including yesterday. We do not know how many workers in are involved, but it is clearly more than the 3 or 4 workers who the supervisors yesterday told me that they were contacting to get quarantined.

McDonald's has not acted in accordance with this information. McDonald's now requires me and the employees who were exposed to the worker with COVID on March 30, to return to work on Monday April 13.

McDonald's is not making any plans to protect all the other supposedly "healthy" workers who might have been exposed since then to each other.

We need OSHA's help to stop McDonalds from requiring us to return until we all know that we were never infected by the worker who was sick, or by someone else who later appeared healthy but was contagious.

2. McDonalds fails to provide an adequate supply hand sanitizer.
3. 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.

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.

#### 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 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 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. 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.

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,

Angelica Hernandez



Laura Pozos



Griselda Esparaza

