

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MICHAEL RUBIN (SBN 80618)
STACEY M. LEYTON (SBN 203827)
BARBARA J. CHISHOLM (SBN 224656)
CORINNE F. JOHNSON (SBN 287385)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-mail: mrubin@altber.com
sleyton@altber.com
bchisholm@altber.com
cjohnson@altber.com

*Attorneys for Plaintiffs Yamilett Olimara
Osoy Hernandez, Angely Rodriguez Lambert,
Maria Orozco, Marcos Ricardo Garcia Giron
and Edgar Esteban Sazo Osoy*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

YAMILETT OLIMARA OSOY HERNANDEZ,
ANGELY RODRIGUEZ LAMBERT, MARIA
OROZCO, MARCOS RICARDO GARCIA
GIRON and EDGAR ESTEBAN SAZO OSOY,
a minor, acting through his/her guardian ad
litem, Yamilett Osoy,

Plaintiffs,

vs.

VES McDONALD'S, a California corporation;
MMSD MANAGEMENT, INC., a California
corporation; VALERIE SMITH, a California
resident; MICHAEL SMITH, a California
resident; and DOES 1-100

Defendants.

) Case No. _____

) **COMPLAINT**

-) 1. Public Nuisance
-) 2. Unfair and Unlawful Business Practices
-) 3. Oakland Emergency Paid Sick Leave Ordinance
-) 4. Oakland Paid Sick Leave Ordinance
-) 5. Declaratory Judgment

) **DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. COVID-19 is a highly contagious infectious respiratory disease caused by a novel
3 coronavirus. People infected with the disease may suffer serious long-term health complications,
4 including lung inflammation, clogging of lung air sacs, sharp reductions in the body’s oxygen
5 supply, blood clots, organ failure, intestinal damage, heart inflammation, liver problems,
6 neurological malfunction, acute kidney disease, and death. The risk presented by COVID-19
7 infection is particularly acute in low-income communities and among people of color, and in
8 locations like the McDonald’s restaurant at issue in this lawsuit, where employees (including some
9 Plaintiffs) have been forced to work in close proximity, without adequate masks, gloves or facial
10 shields, without sufficiently frequent or effective sanitization of commonly used devices and
11 commonly touched surfaces, under the direction of owners and managers who have forced sick
12 employees to work despite being highly contagious and who failed to provide legally required stay-
13 at-home directives with sick pay to employees who were exposed to this terrible contagion.

14 2. This is an action for public nuisance and other public-health related claims under state
15 and local law. Plaintiffs include four individuals who have suffered—and in some instances are
16 continuing to suffer—the ravages of infection from COVID-19. Three of those individuals either
17 believe that they unknowingly spread the disease to family members or others in the community,
18 including young children, or reasonably fear having done so. Those three Plaintiffs became sick
19 while working at the McDonald’s restaurant at 4514 Telegraph Avenue in Oakland, owned by
20 Defendant VES McDonald’s (which owns and operates at least two other McDonald’s restaurants
21 in the area) and managed in part by Defendant Michael Smith, who is the son of the owner of VES
22 McDonald’s (Defendant Valerie Smith) and who himself owns Defendant MMSD Management,
23 Inc., which, on information and belief, operates at least two additional local McDonald’s
24 restaurants. The fourth Plaintiff who suffered from a COVID-19 infection is the infant son of one
25 of the Plaintiffs employed at 4514 Telegraph Avenue; he contracted COVID-19 from his mother.
26 The final Plaintiff has worked at the 4514 Telegraph Avenue restaurant in close proximity with co-
27 workers who later tested positive for COVID-19; he fears becoming infected and spreading the
28 disease to others.

1 3. Plaintiffs seek injunctive, declaratory, and other make-whole relief to remedy
2 Defendants' dangerous, unreasonable, and unjustifiable policies and practices in response to the
3 COVID-19 pandemic. In callous disregard of the physical and emotional impacts of the novel
4 coronavirus on the restaurant's employees, customers, and those in the community with whom
5 those employees and customers lived, engaged, and otherwise interacted, Defendants knowingly
6 and recklessly, by acts of commission and omission, exacerbated the spread—and the reasonable fear
7 of spread—of COVID-19 among Plaintiffs and others in their community. Defendants' policies and
8 practices, including the acts and omissions alleged herein, thereby created or substantially assisted
9 in the creation of an actionable public nuisance under California Civil Code § 3480, violated the
10 City of Oakland's Emergency Paid Sick Leave Ordinance and Paid Sick Leave Ordinance, and
11 constituted an unfair and unlawful business practice that is responsible for causing substantial, life-
12 threatening, and entirely foreseeable yet preventable harms to the health and safety of Plaintiffs and
13 others in the community.

14 4. Since mid-May 2020 alone, at least 11 workers at the 4514 Telegraph Avenue store,
15 including Plaintiffs Yamilett Osoy, Lambert, and Orozco, as well as six of their family members,
16 have tested positive for COVID-19. One of those 11 workers is employed both by Defendants VES
17 McDonald's as a manager at the 4514 Telegraph Avenue restaurant *and* by a different McDonald's
18 franchisee as a manager at the McDonald's restaurant at 1998 Shattuck Avenue in Berkeley,
19 California. That manager worked while exhibiting COVID-19 symptoms at both restaurant
20 locations, and now an additional seven workers at the 1998 Shattuck Avenue restaurant have tested
21 positive for COVID-19. At last count, the COVID-19 outbreak that began at the 4514 Telegraph
22 Avenue store has resulted in at least 25 cases of COVID-19. Each of those cases involves workers
23 or their family members or co-habitants in low-income Latino communities, a population
24 particularly hard-hit by the COVID-19 pandemic. Those in a position of authority in workplaces
25 comprised of essential workers from this hard-hit population have an obligation to implement
26 effective measures to contain the spread of this highly infectious, deadly virus and not, as here, to
27 be criminally lax and thereby facilitate its spread.

1 5. This rampant spread of COVID-19 among Plaintiffs, their families, and local
2 community members is directly attributable to Defendants' cold-hearted economic decision in May
3 2020 to ignore substantial, inescapable evidence of rising infection levels among workers at the
4 4514 Telegraph Avenue store and to Defendants' implementation of policies and practices, in plain
5 violation of applicable, critically important public health orders, that facilitated rather than
6 diminished the spread of COVID-19 among Defendants' workers and community members. These
7 wrongful policies and practices include, but are not limited to: (1) instructing workers with COVID-
8 19 symptoms to continue working even when obviously highly contagious; (2) failing to adopt and
9 enforce precautionary measures such as social distancing, to provide employees with sufficient and
10 adequate personal protective equipment ("PPE") such as face masks and gloves; (3) failing to
11 regularly and adequately sanitize and clean commonly used equipment, bathrooms, and high-touch
12 surfaces; (4) failing to instruct symptomatic workers and co-workers who came in close contact
13 with them to self-quarantine, with sick pay, for at least 14 days, and (5) when workers have actually
14 tested positive for COVID-19, failing to conduct even the most basic contact tracing or providing
15 timely or adequate notifications to co-workers who were in close contact and are thus at heightened
16 risk of contracting COVID-19 and transmitting it to others. Defendants' failure to provide any
17 mechanism for workers with COVID-19 to request to take paid sick leave violated and continues to
18 violate the emergency public health leave laws that the City of Oakland enacted prior to the events
19 at issue here for the specific purposes of protecting its community by arresting the spread of
20 COVID-19, protecting the health and safety of individuals who have contracted or may contract it,
21 and reducing the enormous drain on public resources caused by virus-related hospitalizations.

22 6. McDonald's Corporation is a multi-billion dollar fast-food business, which operates
23 through corporate-owned and franchised restaurants, or "stores," throughout the world. The
24 franchised store at issue in this lawsuit is owned and/or operated by Defendants, who are
25 responsible as franchise owners and managers for complying with the detailed requirements
26 imposed by McDonald's Corporation and McDonald's USA, LLC (together, "McDonald's
27 Corporate"), and set forth in the franchise owner's Franchise Agreements and in a comprehensive
28 set of detailed operations manuals and guidelines prepared and overseen by McDonald's

1 Corporate—which are regularly updated, including recently to provide instructions concerning
2 COVID-19 prophylactic procedures—and with which franchise owners must abide by, upon pain of
3 having the franchise terminated and/or not being permitted to expand.

4 7. Defendant VES McDONALD’S (“VES”) is a McDonald’s franchise that operates at
5 least four McDonald’s restaurants, including the restaurant at 4514 Telegraph Avenue, and is
6 owned by Defendant VALERIE SMITH.

7 8. On information and belief, Defendant MSSD MANAGEMENT, INC. (“MSSD”) is a
8 sister organization to VES that is owned by Valerie Smith’s son, Defendant MICHAEL SMITH,
9 and Sanae Smith, Michael’s Smith’s wife, and which operates at least two additional McDonald’s
10 restaurants. Michael Smith also manages operations at the VES-owned restaurants and has worked
11 on-site at the VES-owned restaurant at 4514 Telegraph Avenue.

12 9. Plaintiffs seek declaratory, injunctive, compensatory and other statutorily available relief
13 to protect them—and their family and community members—from further undue and unnecessary
14 exposures to the COVID-19 virus and to compensate them for the harms they suffered and are
15 continuing to suffer, including the reasonable fear and anxiety of COVID-19 exposure that was
16 sharply heightened by Defendants’ wrongful conduct as alleged herein.

17 **JURISDICTION AND VENUE**

18 10. The Superior Court of the State of California has jurisdiction in this matter because
19 Defendants VES and MSSD are California corporations that regularly conduct business in
20 California, and because Defendants Valerie and Michael Smith are California residents. No federal
21 question is at issue in this lawsuit. Plaintiffs’ claims are solely based upon California law.

22 11. Venue is proper in this judicial district and the County of Alameda, California because
23 Plaintiffs Yamilett Osoy, Lambert, Orozco, Garcia, and Edgar Osoy each reside, performed work,
24 and/or continue to perform work in the County of Alameda; because Defendants maintain offices
25 and facilities and transact business in the County of Alameda; and because Defendants’ wrongful
26 conduct that is the subject of this action for public nuisance affects Plaintiffs and other persons
27 similarly situated in the County of Alameda.

28 **PARTIES**

1 12. Plaintiff Yamilett Olimara Osoy Hernandez has been employed by VES as a crew
2 member at the 4514 Telegraph Avenue restaurant for approximately five months, including during
3 early 2020 when the COVID-19 pandemic first began infecting residents of Alameda County. Ms.
4 Osoy rarely leaves the house except to go to work, and was exposed to COVID-19 at Defendants’
5 4514 Telegraph Avenue restaurant in May 2020 when she worked in close proximity to at least
6 three co-workers (Cindy Martinez, Eric Orozco, and Nancy Castillo) who have tested positive for
7 COVID-19. After experiencing symptoms of COVID-19—including difficulty breathing, a
8 headache, body aches, and a feeling that she was about to faint—while at work on May 20, Ms.
9 Osoy asked her shift manager, Eucario Ornelas, whether she could leave work and go home. Mr.
10 Ornelas responded that she could not leave work until she found a co-worker to cover her shift. Ms.
11 Osoy continued to experience COVID-19 symptoms while working two additional full shifts,
12 during which time she came into close contact with multiple co-workers. Ms. Osoy subsequently
13 tested positive for COVID-19. As a result of her illness, Ms. Osoy transmitted COVID-19 to her
14 10-month-old son—who developed a fever of 104 degrees, diarrhea, loss of appetite, and
15 convulsions—and to her husband, who lost his sense of smell and taste. Both tested positive for
16 COVID-19. Ms. Osoy informed store manager Marisol Lopez that she had tested positive for
17 COVID-19, but was neither told to self quarantine nor asked which co-workers she had worked
18 with closely when she was likely contagious. When Ms. Osoy asked whether she would receive
19 sick pay for the work missed due to being sick with COVID-19, Ms. Lopez responded that she
20 would need to ask Defendant Michael Smith. Neither Ms. Lopez nor Mr. Smith responded to Ms.
21 Osoy regarding this specific request for paid sick leave. Defendant VES does not provide Ms. Osoy
22 with any health insurance, and she has had to self-fund for medicine and health and care supplies as
23 a result of Defendants’ actions.

24 13. Plaintiff Angely D Rodriguez Lambert has been employed by VES as a crew member at
25 the 4514 Telegraph Avenue restaurant for approximately six months. Ms. Lambert was exposed to
26 COVID-19 at Defendants’ 4514 Telegraph Avenue restaurant in May 2020 when she worked in
27 close proximity with at least five workers (Cindy Martinez, Nancy Castillo, Maria Orozco, Yamilett
28 Olimara Osoy Hernandez, and Eric Orozco) who have tested positive for COVID-19, some of

1 whom were symptomatic when Ms. Lambert worked closely with them. Ms. Lambert began
2 experiencing symptoms of COVID-19, including a strong headache and severe body aches, during a
3 work shift on May 23. She informed her managers Eucario Ornelas and Gregoria Gallo of her
4 symptoms and asked whether she could leave work to go home. Those managers told Ms. Lambert
5 that she could not leave work until her shift was over, so she continued to work in close proximity
6 to other employees. Two days later, Ms. Lambert was asked by store manager Marisol Lopez to
7 cover an extra shift. Ms. Lambert told Ms. Lopez that she could not work that shift, or at all,
8 because she had been tested for COVID-19 and instructed to self quarantine until she received the
9 results. Ms. Lambert then asked if she would receive paid sick leave for the days of work that she
10 would miss as a result. Ms. Lopez said she did not think so, but would ask Defendant Michael
11 Smith. Ms. Lambert reasonably understood that to mean that she would not be paid for missing
12 work while awaiting her test results. Four days later, Ms. Lambert was told that she had tested
13 positive for COVID-19. Ms. Lambert ordinarily lives with her aunt, uncle, and grandmother, who
14 is particularly vulnerable to the coronavirus because she is over 80 years old. On May 24, after Ms.
15 Lambert learning that several co-workers had tested positive for COVID-19, she moved out of her
16 house and into an apartment—which requires her to pay additional rent—to avoid exposing her
17 family. Ms. Lambert is still sick. Recently she developed a rash all over her skin that a doctor has
18 advised her will require her to remain quarantined for at least 14 additional days. Defendant VES
19 does not provide Ms. Lambert with any health insurance, and she has had to self-fund for medicine,
20 health and care supplies, and doctors’ visits as a result of Defendants’ actions.

21 14. Plaintiff Maria Orozco has been employed by VES as a crew member at the 4514
22 Telegraph Avenue restaurant for approximately 18 months. Ms. Orozco was exposed to COVID-19
23 at Defendants’ 4514 Telegraph Avenue restaurant when she worked on May 13 and 17 in close
24 proximity with at least two workers (Nancy Castillo and Cindy Martinez) who have tested positive
25 for COVID-19 as well as a store manager (Marisol Lopez) who was sick with flu-like symptoms the
26 week of May 18. On May 20, Ms. Orozco told Ms. Lopez that she was being tested for COVID-19
27 and on May 21, Ms. Orozco tested positive. She has called Ms. Lopez to ask if she will be paid for
28 her missed work but has not received a response. Her two children have also contracted COVID-

1 19. So has her babysitter. Ms. Orozco believes that her babysitter contracted COVID-19 from Ms.
2 Orozco, because the babysitter has not been in close contact with anyone else who has tested
3 positive or who has COVID-19 symptoms. Defendant VES does not provide Ms. Orozco with any
4 health insurance, and she has had to self-fund for medicine, health and care supplies, and doctors'
5 visits as a result of Defendants' actions.

6 15. Plaintiff Marcos Ricardo Garcia Giron has been employed by VES as a crew member at
7 the 4514 Telegraph Avenue restaurant for approximately 14 months. For much of that same period,
8 Mr. Garcia was also employed by a different franchise at another McDonald's restaurant located at
9 1998 Shattuck Avenue in Berkeley, California. At both stores, Mr. Garcia has worked in close
10 proximity to many of the workers who have tested positive for COVID-19. He has a reasonable
11 and actual fear that Defendants' unsafe policies and practices will expose him to COVID-19 if he
12 continues working at the 4514 Telegraph Avenue or the 1998 Shattuck Avenue restaurant.

13 16. Plaintiff EDGAR ESTEBAN SAZO OSOY is the 10-month-old child of Plaintiff
14 Yamilett Osoy. He contracted COVID-19 from his mother in May 2020. Mr. Osoy developed a
15 fever of 104 degrees, diarrhea, loss of appetite, and convulsions from his COVID-19 infection.

16 17. Plaintiffs are informed and believe, and thereon allege, that Defendant VES is a
17 California corporation that operates in California whose principal business is to operate fast-food
18 restaurants and to provide restaurant and related services, including at the 4514 Telegraph Avenue
19 location. At all relevant times, Defendant VES has done business in California and committed the
20 unlawful acts and omissions alleged in this complaint in California.

21 18. Plaintiffs are informed and believe, and thereon allege, that Defendant Valerie Smith is
22 the owner of VES and is a California resident. At all relevant times, Valerie Smith had knowledge
23 of the facts alleged herein and was responsible for adopting and implementing and did adopt and
24 implement the policies and practices that are challenged in this complaint.

25 19. Plaintiffs are informed and believe, and thereon allege, that Defendant MSSD is a sister
26 organization to VES that is owned by Valerie Smith's son, Defendant Michael Smith, and Sanae
27 Smith, Michael Smith's wife.

1 20. Plaintiffs are informed and believe that Defendant Michael Smith owns MSSD and
2 separately manages the restaurants owned by Valerie Smith and VES, including the restaurant at
3 4514 Telegraph Avenue in Oakland, California.

4 21. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
5 Plaintiffs at this time, and Plaintiffs therefore sue such DOE Defendants under fictitious names.
6 Plaintiffs are informed and believe, and thereon allege, that each Defendant designated as a DOE is
7 in some manner responsible for the occurrences alleged herein, and that Plaintiffs' injuries and
8 damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants.
9 Plaintiffs will seek leave of the Court to amend this complaint to allege the true names and
10 capacities of such DOE Defendants when ascertained.

11 22. Plaintiffs are informed and believe, and thereon allege, that each and every act and
12 omission alleged herein was performed by, and/or attributable to, all Defendants, each acting as
13 agents and/or employee of, and/or under the direction and control of, each of the other Defendants,
14 and that said acts and failures to act were within the course and scope of said agency, employment,
15 and/or direction and control.

16 23. As a direct and proximate result of the unlawful actions of Defendants, Plaintiffs have
17 suffered, and continue to suffer, economic and other losses in amounts as yet unascertained, but
18 subject to proof at trial, and within the jurisdiction of this Court.

19 **FACTUAL ALLEGATIONS**

20 24. COVID-19 is a highly contagious respiratory disease that is known to cause fever, dry
21 cough, extreme fatigue, body aches, headache, sore throat, and loss of taste and smell. In some
22 infected people, COVID-19 causes difficulty breathing and pain or pressure on the chest—
23 mimicking the symptoms of cardiac failure. In severe cases, COVID-19 wreaks havoc on multiple
24 organ systems, including by damaging kidneys and causing blood clots that can result in stroke.
25 Over 120,000 people in the United States have died from COVID-19 since February 2020 and at
26 least 2.2 million have been infected, although many medical experts estimate that the number of
27 deaths and infections far exceed official tallies. The pandemic has severely burdened Americans'
28 mental health as well, with nearly half of adults in the U.S. reporting high levels of anxiety and

1 stress due to COVID-19. Essential workers and their families, who are at heightened risk of
2 contracting the virus, experience significant anxiety and trauma from potential exposure to the life-
3 threatening condition. Panic attacks are common among those who are infected and those who fear
4 becoming infected. See <https://www.nytimes.com/article/coronavirus-symptoms.html>;
5 <https://www.sacbee.com/news/coronavirus/article241363476.html>.

6 25. Several segments of the populations are particularly vulnerable to the ravages of
7 COVID-19, including individuals over 65 years of age and people with underlying medical
8 conditions such as asthma, chronic lung disease, asthma, heart conditions, severe obesity, diabetes,
9 chronic kidney disease, liver disease, hemoglobin disorders (e.g., sickle cell disease), and people
10 with compromised immune systems (e.g., cancer, HIV/AIDS and organ transplant patients). The
11 risk of hospitalization and the fatality rate increase precipitously with age. The majority of people
12 hospitalized with COVID-19 have at least one preexisting condition and are far more likely to die
13 from COVID-related complications.

14 26. For several structural reasons, COVID-19 disproportionately burdens Black and Latinx
15 people in the U.S. compared to other racial and ethnic groups. The Centers for Disease Control
16 (CDC) attributes COVID's disparate racial impact in part to the fact that nearly a quarter of Black
17 and Latinx workers are employed in essential services industries (including the fast-food restaurant
18 industry), compared to 16% of white workers—and essential workers are at increased risk of
19 COVID-19 infection. According to the CDC, Latinx workers have lower rates of access to paid
20 sick leave than white workers, and workers who lack paid sick leave are more likely to continue
21 working even when they experience signs of illness.

22 27. COVID-19 is a highly contagious disease. The most common ways for COVID-19 to
23 spread is through close interaction with an infected person that allows the virus to spread through
24 airborne particles or aerosolized droplets, which are secretions from talking, coughing and
25 sneezing; or contact with a contaminated surface. The risk of infection through spread increases
26 dramatically when individuals are in close physical proximity (e.g., within six feet of each other),
27 particularly indoors and for extended periods of time. The risk of infection increases exponentially
28

1 for those in contact with infected persons who sneeze or cough or otherwise project secretions into
2 the air.

3 28. COVID-19 has been shown to spread by individuals who show no symptoms or only
4 mild symptoms. For this reason, the CDC and other health experts have recommended that every
5 individual should take significant efforts to avoid close contact with others, whether those other
6 persons appear to be infected or not.

7 29. Recent research published by the CDC suggests that a single person with COVID-19 is
8 likely to infect five or six other individuals absent aggressive physical distancing practices. *See*
9 “High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2,”
10 Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and
11 Ruian Ke, [https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287)
12 [DM25287](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287).

13 30. On March 1, 2020, Alameda County Health Officer Dr. Erica Pan declared a local health
14 emergency. The first case of COVID-19 in Alameda County was reported the following day. On
15 March 4, 2020, California Governor Gavin Newsom declared a state of emergency and deployed
16 resources to prevent the spread of COVID-19. On March 10, 2020, the Alameda County Board of
17 Supervisors ratified the state of emergency that Dr. Pan had declared.

18 31. On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 to be
19 a global pandemic.

20 32. On March 13, 2020, President Donald Trump declared a national state of emergency in
21 this country as a result of the disease and its rapid spread.

22 33. The WHO, the CDC, and doctors, scientists, and epidemiology and public health
23 experts throughout the world agree that infection from COVID-19 can be minimized only by
24 slowing the spread of the disease, principally by limiting human-to-human contact (including
25 through physical distancing) and by taking other preventative measures, such as the use of personal
26 protective equipment (“PPE”) and frequent handwashing and sanitization of physical objects.

27 34. On March 16, 2020, Alameda County joined five other Bay Area Counties in
28 announcing a shelter-in-place order to take effect March 17, 2020. The shelter-in-place order

1 directed all Alameda County businesses to close unless they were designated an “essential
2 business” like a restaurant and directed all residents to stay home unless they worked for an
3 “essential business” or were engaged in “essential activities” or performing “essential governmental
4 functions.”

5 35. Alameda County’s shelter-in-place order defines restaurants as essential businesses and
6 prohibits dining in but permits continued operations via delivery, pick-up, or drive-through only.
7 The order mandates that all essential businesses, to the greatest extent possible, require all
8 individuals to be separated by six feet whenever possible; to provide access to hand sanitizer or
9 handwashing facilities with soap and water and to allow frequent handwashing of at least 20
10 seconds’ duration; and to regularly clean high-touch surfaces.

11 36. On March 19, 2020, Governor Newsom issued a statewide shelter in place order,
12 directing all California residents to stay home unless they worked for an “essential business” such
13 as a restaurant.

14 37. The CDC has recognized the heightened risks posed face by workers in the restaurant
15 industry, and has released safety guidance for employers operating food retail establishments to
16 prevent the transmission of COVID-19, including “What Grocery and Food Retail Workers Need to
17 Know about COVID-19,” CDC, available at [https://www.cdc.gov/coronavirus/2019-
18 ncov/community/organizations/grocery-food-retail-workers.html](https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/grocery-food-retail-workers.html). That CDC guidance is in
19 addition to more general guidance that the CDC has issued for all businesses open during the
20 pandemic, such as “Interim Guidance for Businesses and Employers to Plan and Respond to
21 Coronavirus Disease 2019 (COVID-19)” CDC, available at [https://www.cdc.gov/coronavirus/2019-
22 ncov/community/guidance-business-response.html](https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html).

23 38. As the CDC has noted, potential sources of exposures for food retail workers “include
24 close contact for prolonged periods of time with a customer with COVID-19 and touching your
25 nose, mouth, or eyes after handling items, cash, or merchandise that customers with COVID-19
26 have touched.”

27 39. The CDC’s guidance for retail food establishments recommends several steps for
28 protecting employee safety, including the following: (1) actively encouraging sick employees to

1 stay home; (2) requiring employees diagnosed with COVID-19 to stay home; (3) providing accurate
2 information to employees about COVID-19, including how it spreads and the risks of exposure; (4)
3 implementing store policies to minimize contact with others, including customers and co-workers,
4 who may be at heightened risk (such as older adults and persons with chronic medical conditions);
5 (5) training workers on proper hand washing practice and other preventative measures; (6)
6 providing access to soap, clean running water, and materials for drying their hands, and providing
7 alcohol-based hand sanitizers throughout the work area for use by workers and customers; (7)
8 implementing measures to maintain physical distance between and among employees and
9 customers; (8) configuring partitions with a pass-through opening for checkout or other
10 transactions; (9) moving any electronic payment terminal or credit card reader way from the cashier
11 to increase the distance between the person operating the cash register and the customer; (10)
12 locating signage throughout the workplace, including at entrances, in restrooms, and in breakrooms
13 to remind employees and customers to stay at least six feet apart from each other; (11) placing
14 visual symbols such as floor decals, colored tape, or signs to show customers where they should
15 stand during checkout; (12) removing or rearranging seating arrangements and adding visual
16 symbols in dining areas, near workstations, and in break rooms to promote physical distancing; (13)
17 limiting the number of customers inside the building at any time, and setting up designated pick-up
18 areas for remote orders; (14) controlling the flow of traffic by establishing and maintaining capacity
19 control; (15) instructing workers and customers to stay home when sick, and to observe good
20 hygiene practices; (16) providing tissues to employees and disposal bins that do not need to be
21 touched; (17) regularly cleaning and disinfecting frequently touched surfaces, with disinfectant
22 solutions, including in break rooms; (18) providing disposable disinfectant wipes, cleaner, or spray
23 to enable workers to wipe down frequently touched surfaces; (19) implementing flexible sick leave
24 policies and practices that do not require a positive COVID-19 test result or doctor's note before an
25 employee is allowed to qualify; and (20) providing information on whom to contact if a worker
26 become sick and what practices to implement.

27 40. The CDC also recommends that all persons wear protective face coverings in public
28 settings when physical distancing measures are difficult to maintain. *See* "Recommendation

1 Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based
2 Transmission,” CDC, available at [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html)
3 [sick/cloth-face-cover.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html).

4 41. The Alameda Department of Public Health has also issued updated and extended shelter-
5 in-place orders, including on March 31, 2020, April 29, 2020, May 18, 2020, and June 8, 2020.
6 Until June 21, essential businesses are required to prepare, distribute to all workers, and post for
7 customers a “Social Distancing Protocol” that explains how the business is accomplishing each of
8 following (among others): (1) requiring face coverings of all individuals who enter the business
9 (except for individuals exempt from that requirement); (2) ensuring maintenance of a minimum six-
10 foot distance between individuals at all times where possible; (3) providing hand sanitizer and soap
11 and water, providing for contactless payment or (if impossible) disinfecting payment instruments
12 after each use; (4) regularly disinfecting high-touch surfaces; and (5) posting a sign prohibiting
13 anyone from entering the facility if they have COVID-19 symptoms.

14 42. Effective June 22, such businesses must prepare, distribute to workers, and post at or
15 near the entrance a “Site-Specific Protection Plan” that explains how the business is, among other
16 things, doing the following: (1) providing employees with temperature or symptom screenings at
17 the beginning of each work shift; (2) providing and ensuring employees are properly using face
18 coverings at all times; (3) directing employees who are sick or symptomatic to remain home and to
19 follow county guidelines for self quarantining; (4) thoroughly and regularly cleaning and
20 disinfecting commonly used surfaces and areas; (5) cleaning and sanitizing all shared equipment
21 and touchable surfaces between uses; (6) making available hand washing and sanitizing materials;
22 (7) requiring employees to maintain six feet of distance between themselves and other workers and
23 customers; (8) notifying the Department of Public Health of all positive COVID-19 employee tests;
24 and (9) providing required training to employees,

25 43. The updated shelter-in-place order also requires essential businesses to follow any
26 industry-specific guidance issued by the Alameda County Health Officer. The Alameda County
27 Department of Environmental Health has issued a specific “Guidance for Food Facilities” that
28 instructs food facilities to take measures that include the following: (1) perform daily checks of

1 employees for illness and ensure employees stay home when sick; (2) send home immediately
2 employees who appear too ill to work; (3) advise employees with fever or respiratory illness to
3 remain home and not to return to work until at least three days after recovery and seven days since
4 the appearance of symptoms; (4) require appropriate face coverings at all times; (5) require
5 employees to keep a six-foot distance between themselves, other workers, and customers; (6)
6 inform the Department if an employee tests positive or presumed positive; (7) ensure employees are
7 permitted to wash their hands every 30 minutes and at additional times; (8) increase frequency of
8 cleaning and sanitizing per CDC's Cleaning and Disinfection guidance of all hard surfaces; (9)
9 designate employees to clean and disinfect all high-touch surfaces; and (10) follow certain cleaning
10 and disinfecting practices. The Guidance also recommends use of gloves, scheduling employees to
11 work the same shift and not shifting employees between shifts in the event that an employee is
12 diagnosed with COVID-19, and designating an employee who will enforce social distancing
13 requirements.

14 44. On April 3, 2020, the Alameda County Health Officer issued a Public Health
15 Emergency Quarantine Order, which was amended on May 4 and June 8. That order requires
16 "Close Contacts of Persons with COVID-19," defined to include anyone who has been "within 6
17 feet of a case for a prolonged period of time (> 15 minutes)" of a person infected or likely infected
18 with COVID-19, to remain at home, and not enter any public place, for at least 14 days after their
19 last contact with the infected or potentially infected individual.

20 45. McDonald's Corporate, on behalf of itself and all of its franchisees including
21 Defendants, including on information and belief through funds provided by Defendants, has
22 misleadingly sought through extensive advertising to reassure customers of corporate-owned and
23 franchise-owned McDonald's-branded restaurants that all McDonald's entities have implemented
24 an effective response to COVID-19 throughout their restaurants, consistent with its professed
25 commitment to protect the safety and health of all of its customers and employees. For example, in
26 a press release dated April 16, 2020, McDonald's gave assurances that it was "committed to staying
27 open" during the pandemic, but that because "we have a responsibility to our people" McDonald's
28 promised to "proactively monitor the impact of the coronavirus, [and] continuously making changes

1 to processes and restaurant operations with safety top of mind.” McDonald’s press release also
2 stated, “During these unprecedented times, our number one priority is the health and safety of our
3 employees and customers, which guides our decisionmaking,” and that “[f]rom the beginning of the
4 crisis in February, our safety and sanitation practices have been informed by guidance from both
5 our own third-party contagious disease experts and the CDC,” and that “[a]s the expert guidance
6 has evolved, we have quickly adjusted our procedures, recommendations and resources provided to
7 the restaurants.” See [https://news.mcdonalds.com/news-releases/news-release-details/keeping-](https://news.mcdonalds.com/news-releases/news-release-details/keeping-safety-top-mind-restaurant-employees-and-communities)
8 [safety-top-mind-restaurant-employees-and-communities.](https://news.mcdonalds.com/news-releases/news-release-details/keeping-safety-top-mind-restaurant-employees-and-communities)

9 46. The reality at the 4514 Telegraph Avenue restaurant fell far short of these stated
10 objectives. While the restaurant did comply with McDonald’s “commitment to staying open,” it
11 failed to take even the most basic precautions to protect the health and safety of the employees,
12 leading to a public spread of the COVID-19 disease including among 4514 Telegraph Avenue
13 employees, their family members and close contacts, and employees at another McDonald’s
14 restaurant.

15 47. Defendants were fully aware of life-threatening dangers posed by exposure to COVID-
16 19 by March 2020 if not earlier, including the risk that this deadly, highly contagious, easily
17 transmitted virus could spread among workers and customers in confined indoor environments,
18 especially if potentially infected individuals—including non-symptomatic individuals—did not
19 have adequate PPE and were not properly trained and required to perform physical distancing and
20 to stay home if symptomatic or believed to have been exposed, and if equipment and common areas
21 were not regularly sanitized after all exposures.

22 48. Defendants did not provide adequate PPE, training, or sanitization, nor did they institute
23 other policies or practices that public health experts in the early 2020 were urging restaurants and
24 other public facilities to implement to protect workers and customers from exposure to this virulent
25 disease.

26 49. With Defendants’ knowledge and approval, crew member Nancy Castillo worked at the
27 4514 Telegraph restaurant on or around May 16 and May 17, 2020 while having symptoms
28 consistent with COVID-19, and store manager Marisol Lopez worked at that store while

1 symptomatic for multiple days in May 2020. Ms. Castillo and Ms. Lopez both came in close
2 contact with co-workers, including Plaintiffs, those days. At that time, Defendants were fully aware
3 that the COVID-19 pandemic was sweeping through Alameda County and the country as a whole,
4 but took no measures to prevent individuals with COVID-19 symptoms from coming to work.

5 50. On May 18, Plaintiff Yamilett Osoy asked her shift manager Eucario Ornelas whether
6 she could leave work and go home because she was after experiencing symptoms of COVID-19
7 (including difficulty breathing, a headache, body aches, and a feeling that she was going to faint)
8 while at work. Mr. Ornelas told her that she could not leave until she found a co-worker to cover
9 her shift, so she remained at work, where she had close contact with co-workers. Ms. Osoy also
10 worked shifts at that store on May 19 and 20, despite being sick, and she had close contact with co-
11 workers, including other Plaintiffs, before testing positive for COVID-19 on May 23.

12 51. On May 20, Cindy Martinez informed store manager Marisol Lopez before beginning
13 her shift that she was sick and was experiencing COVID-19 symptoms (including a fever,
14 headache, and severe body aches). Ms. Lopez told Ms. Martinez that she had to come to work
15 because no one was available to cover her shift. Ms. Martinez went to work as ordered and worked
16 in close proximity with several other workers. She subsequently tested positive for COVID-19.

17 52. On May 23, Plaintiff Lambert informed her managers Eucario Ornelas and Gregoria
18 Gallo that she was experiencing symptoms of COVID-19 (including a strong headache and severe
19 body aches) and asked whether she could leave work to go home. Her managers responded that she
20 could not leave work until her shift was over and they required her to continue working in close
21 proximity to other employees. Ms. Lambert subsequently tested positive for COVID-19.

22 53. Other employees have worked shifts at the 4514 Telegraph Avenue restaurant despite
23 having symptoms consistent with COVID-19. A number of these employees later tested positive
24 for COVID-19.

25 54. Defendants are and at all times have been aware of employees working with COVID-19
26 symptoms and testing positive for COVID-19. Despite this knowledge, Defendants have
27 encouraged and instructed employees with COVID-19 symptoms to come to work and failed to
28 warn co-workers or institute additional precautionary measures.

1 55. Defendants are and at all times have been aware of which employees have worked in
2 close contact with co-workers who displayed COVID-19 symptoms and/or who tested positive for
3 COVID-19. Despite this knowledge, Defendants waited several days after having being informed
4 of positive test results before telling co-workers who worked in close proximity with sick
5 employees. They have not told employees who was exposed, who should quarantine, or what
6 additional precautions they would take to control the outbreak.

7 56. A person with COVID-19 is considered to be infectious for at least 48 hours before their
8 symptoms first appeared. *See* <http://publichealth.lacounty.gov/acd/docs/COVHomeQuarantine.pdf>.
9 Defendants were aware in May 2020, and continue to be aware, that a person with COVID-19 is
10 considered to be infectious at least 48 hours before their symptoms first appeared.

11 57. Despite Defendants' knowledge of the COVID-19 outbreak, Defendants failed to take
12 measures to prevent and then to arrest the spread of COVID-19 at the 4514 Telegraph Avenue
13 restaurant. In March, Defendants provided employees with masks to employees that were made
14 out of dog diapers or coffee filters. After workers complained, Defendants provided disposable
15 masks but required workers to use them for multiple days, instructing employees to wash and reuse
16 them until they fell apart. Defendants at times provided gloves, but those gloves were flimsy and
17 tore easily. Defendants do not enforce a regular or adequate hand-washing regimen, and when the
18 restaurant is busy there is no time for employees to wash their hands with appropriate frequency.
19 Defendants have implemented no sanitization of high-touch surfaces, and no regular cleanings or
20 cleaning protocols during shifts. Defendants have failed to implement a plan to require—or even
21 permit—employees to remain at least six feet apart from one another. And while Defendants began
22 taking employees' temperature at the beginning of each shift, the thermometer they use is faulty
23 and inaccurate, and Defendants and restaurant managers have not asked questions about COVID-
24 19 symptoms before workers' shifts.

25 58. Despite Defendants' awareness that employees had tested positive for COVID-19,
26 Defendants did not make any effort in May 2020 to close the restaurant, to send employees with
27 symptoms home with paid sick leave, to prevent employees from working or attending meetings at
28 other McDonald's restaurant locations, to give workers and customers additional PPE, to

1 immediately sanitize any surface that that sick employees had touched, to provide prompt warnings
2 to the co-workers or customers with whom sick employees interacted, or otherwise to take the
3 reasonably necessary precautions that Defendants knew and should have known at the time were
4 critical to minimize the enormous risk of community spread resulting from their illness and return
5 to work.

6 59. On May 26, to protest Defendants' failure to take meaningful steps to protect the health
7 and safety of workers and customers from the spread of COVID-19, even in response to the news
8 that many of Defendants' employees had tested positive for COVID-19, had displayed symptoms at
9 work, and had likely infected a large number of co-workers, employees at the 4514 Telegraph
10 Avenue restaurant went on strike to protest the measures to protect worker safety and health. The
11 restaurant has been closed since that date and has not yet reopened, even as it has announced an
12 intent to reopen.

13 60. On May 28, several workers including Plaintiffs Yamilett Osoy, Lambert, Garcia, and
14 Orozco filed a complaint with the Alameda County Public Health Department, and on May 29 those
15 same workers filed a complaint with Cal-OSHA to complain in detail about McDonald's failure to
16 provide its employees with a safe and healthful work environment as required by state, local, and
17 federal law.

18 61. Defendants have not required any Plaintiffs, or on information and belief any other
19 workers who had come in contact with employees diagnosed with COVID-19, to self-quarantine for
20 a minimum 14-day period.

21 62. As of each employee Plaintiff's most recent day of work at the 4514 Telegraph Avenue
22 store location, Defendants' workplace conditions and practices continued to be inadequate and to
23 pose an ongoing, unreasonably dangerous risk and hazard to the health and safety of those Plaintiffs
24 and all those who live with Plaintiffs and come into contact with Plaintiffs. Those conditions and
25 practices include but are not limited to Defendants' knowing failure to: (1) provide adequate PPE,
26 including adequate masks, gloves, and other protective gear; (2) provide sufficient and proper
27 sanitization of equipment, workstations, and other physical spaces; (3) provide hand sanitizers,
28 wipes, disinfectants, bleach, and other appropriate cleansing materials to employees; (4) make

1 possible and require reasonably safe physical distancing in work areas; (5) provide adequate
2 training to employees concerning physical distancing and appropriate use of PPE; (6) provide
3 sufficient breaks to enable adequate handwashing and other sanitization procedures by employees;
4 (7) conduct appropriate contact tracing of all persons known or suspected to have been infected
5 with the COVID-19 virus while physically present at the restaurant, including employees; (8)
6 provide adequate warnings and instruction to persons known or suspected to have come in contact
7 with infected employees; (9) require self-quarantining, with pay or sick pay, of all employees
8 known or suspected to have come into contact with persons infected with COVID-19 or showing or
9 reporting apparent symptoms of such infection; (10) provide adequate wellness checks and
10 temperature testing of all employees; instruct employees to stay home when symptomatic; (11)
11 restrict common use by employees of physical equipment such as telephones, headsets, terminals,
12 keyboards, bump bars, trays, and drink dispensers without ensuring adequate sanitization of such
13 equipment between uses; (12) close the restaurant periodically to permit adequate deep cleaning and
14 sanitization; and (13) conduct actual and not just superficial cleaning of those areas on a regular
15 basis.

16 63. Plaintiffs are informed and believe, and thereon allege, that Defendants jointly own and
17 operate at least five local McDonald's restaurants, and that the unreasonably dangerous practices
18 and conditions at the 4514 Telegraph Avenue location also exist at each of those other restaurants
19 and thus threaten the health and safety of the public at or near McDonald's restaurants and the
20 surrounding communities throughout the State of California.

21 **FIRST CAUSE OF ACTION**

22 **Public Nuisance – Assisting in the Creation of Substantial and Unreasonable Harm to Public**
23 **Health and Safety that Affects an Entire Community or Considerable Number of Persons**
24 **[Cal. Civil Code §§ 3479, 3480, 3491, 3493; C.C.P. § 731]**
25 **(Brought by All Plaintiffs Against All Defendants)**

26 64. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 63.
28

1 65. California Civil Code § 3479 defines “nuisance” as “[a]nything which is injurious to
2 health, . . . or is indecent or offensive to the senses, . . . so as to interfere with the comfortable
3 enjoyment of life or property.”

4 66. California Civil Code § 3480 defines “public nuisance” as any nuisance that “affects at
5 the same time an entire community or neighborhood, or any considerable number of persons,
6 although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

7 67. To constitute a “public nuisance,” the offense against, or interference with the exercise
8 of rights common to the public must be substantial and unreasonable. *People ex rel. Gallo v.*
9 *Acuna* (1997) 14 Cal.4th 1090, 1103, 1105.

10 68. The acts and omissions of Defendants alleged herein, which caused a considerable
11 number of persons to suffer increased exposures and risks of exposures to the COVID-19 virus,
12 including but not limited to employees and customers of the 4514 Telegraph Avenue restaurant,
13 those employees’ and customers’ family members, the persons with whom employees and
14 customers resided, and the persons with whom those employees and customers came into contact,
15 substantially and unreasonably created and substantially assisted in the creation of a grave risk to
16 public health and safety, and wrongfully and unduly interfered with Plaintiffs’ comfortable
17 enjoyment of their lives and property. *See County of Santa Clara v. Atlantic Richfield Co.* (2006)
18 137 Cal.App.4th 292, 305-06.

19 69. The acts and omissions of Defendants alleged herein substantially and unreasonably
20 created or assisted in the creation of the spread and transmission of grave, life-threatening disease
21 and infection, the risk of spread and transmission of grave, life-threatening disease and infection
22 disease or infection, and the actual and real fear and anxiety of the spread and transmission of
23 grave, life-threatening disease and infection, all of which constitutes an actionable public nuisance.
24 *See, e.g.,* Restatement (Second) of Torts § 821B & cmt. g (“[T]he threat of communication of
25 smallpox to a single person may be enough to constitute a public nuisance because of the
26 possibility of an epidemic; and a fire hazard to one adjoining landowner may be a public nuisance
27 because of the danger of a conflagration.”); *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th
28

1 1540, 1546 (secondhand smoke in condominium complex); *County of Santa Clara v. Atlantic*
2 *Richfield Co.* (2006) 137 Cal.App.4th 292, 306.

3 70. The public nuisance caused by Defendants as alleged herein has caused and will
4 continue to cause special injury to Plaintiffs within the meaning of Civil Code § 3493, due to the
5 infections all but one Plaintiff suffered, the heightened risk of exposures they faced, the lost
6 income they suffered as a result of having to stay home from work, and the increased anxiety and
7 fear caused by their pre-existing medical conditions and their need to separate themselves from
8 fellow workers and close family members to minimize the risk of further community spread.
9 Those harms are different from the types of harms suffered by members of the general public who
10 did not work or have direct contact with employees who worked at the 4514 Telegraph Avenue
11 restaurant where multiple employees contracted COVID-19.

12 71. California Code of Civil Procedure § 731 and California Civil Code §§ 3491, 3493, and
13 3495 authorize Plaintiffs to bring this action for injunctive, equitable abatement, and damages
14 relief from Defendants.

15 72. Defendants' failure to comply with minimum health and safety standards in its
16 restaurant has caused, and is reasonably certain to cause, community spread of the COVID-19
17 infection. Such community spread has not been, and will not be, limited to the physical location of
18 the restaurant only or to the customers or employees of the restaurant only, as infected workers
19 have gone home and will go home to interact with their family members, co-residents, neighbors,
20 and others with whom they must necessarily interact as they undertake essential daily activities
21 such as shopping, doctor's visits, and childcare.

22 73. This community spread has resulted in increased disease and will continue to result in
23 increased disease.

24 74. Defendants' conduct as alleged herein unreasonably interferes with the common public
25 right to public health and safety.

26 75. Defendants' decision to reopen without ensuring minimum basic health and safety
27 standards at its restaurants, including by meeting the CDC guidelines and other minimum public
28 health standards necessary to stop or substantially reduce the spread of COVID-19, is reasonably

1 certain to cause further spread of COVID-19 infection and the reasonable and severe fear of the
2 further spread of COVID-19 to Plaintiffs and other members of the community.

3 76. If prompt and immediate injunctive relief is not granted, Plaintiffs face a significant risk
4 of irreparable harm in the form of physical and emotional injuries and death from Defendants'
5 continuing creation and assistance in the creation of a public nuisance. Plaintiffs employed at the
6 4514 Telegraph store are particularly vulnerable to severe bodily injury or death because of their
7 workplace exposures and, in several instances, their family members face special vulnerability
8 because of their medical preconditions and susceptibility to infection and secondary harms. Such
9 injuries cannot be adequately compensated through an award of damages or otherwise remedied at
10 law.

11 77. Administrative and governmental remedies have proven inadequate to protect Plaintiffs
12 from the harms alleged in this complaint and the wrongful conduct by Defendants alleged in this
13 complaint. OSHA and Cal/OSHA, the principal government agencies tasked with ensuring
14 workplace safety, have deprioritized inspections and enforcement at non-medical workplaces. The
15 CDC, while able to issue recommendations, does not have or exercise independent enforcement
16 authority against businesses that fail to follow those recommendations. Plaintiffs have submitted
17 complaints to public authorities about the public nuisance and public health and safety dangers
18 resulting from McDonald's acts and omissions as alleged herein, but have obtained no relief.

19 78. The risk of injury faced by Plaintiffs outweighs the cost of the reasonable measures
20 included in Plaintiffs' proposed injunction.

21 79. Defendants and each of them are substantial contributors to the public nuisance alleged
22 herein.

23 80. Each Defendant's past and ongoing conduct is a direct and proximate cause of the
24 Plaintiffs' injuries and threatened injuries.

25 81. Defendants and each of them know and should have known that their conduct as alleged
26 herein would be the direct and proximate cause of the injuries alleged herein to Plaintiffs.

27 82. Defendants' conduct as alleged herein constitutes a substantial and unreasonable
28 interference with and obstruction of public rights and property, including the public rights to

1 health, safety and welfare of the Plaintiffs, and those who come in contact with them, whose safety
2 and lives are at risk due to Defendants' failure to adopt and implement proper procedures for
3 protecting workers, customers, and others from exposure to the COVID-19 virus.

4 83. Defendants have committed and continue to commit the acts alleged herein knowingly
5 and willfully.

6 84. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs have
7 been damaged in an amount according to proof at trial.

8 85. In addition to declaratory relief, injunctive relief, and damages as alleged herein,
9 Plaintiffs are entitled to interest, penalties, attorneys' fees and expenses pursuant to Code of Civil
10 Procedure § 1021.5, and costs of suit.

11 **SECOND CAUSE OF ACTION**
12 **Unfair and Unlawful Business Practices**
13 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**
14 **(Brought by All Plaintiffs Against All Defendants)**

15 86. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 85.

17 87. Defendants' acts and omissions constituting a public nuisance as alleged herein also
18 constitute unfair and unlawful business practices under California Business and Professions Code
19 §§ 17200 et seq.

20 88. Defendants' aforementioned acts and omissions constitute business practices in that
21 Defendants have engaged in them repeatedly over a significant period of time and in a systematic
22 manner, to the detriment of Plaintiffs and to Defendants' economic benefit.

23 89. Defendants' aforementioned acts and omissions have caused economic injury to
24 Plaintiffs, including but not limited to lost wages, medical expenses, cost of health and care
25 supplies and PPE, rental expenses in order to self quarantine away from especially vulnerable
26 family members, and child and family care expenses.

27 90. Defendants' acts and omissions also violated the requirements of Alameda County
28 Health Officer directives by operating the 4514 Telegraph Avenue restaurant without providing
adequate and appropriate PPE, handwashing supplies, and cleaning supplies to employees; ensuring

1 that employees properly use face coverings at all times; requiring or adopting a plan that allows
2 maintenance of a minimum six-foot distance between individuals at all times where possible;
3 regularly disinfecting high-touch surfaces; prohibiting anyone from entering the facility if they have
4 COVID-19 symptoms; conducting accurate temperature or symptom screenings at the beginning of
5 each work shift; directing (or even allowing) employees who are sick or symptomatic, or who have
6 been in close contact with others who are sick or symptomatic, to remain home and to follow
7 county guidelines for self quarantining; thoroughly and regularly cleaning and disinfecting
8 commonly used surfaces and areas; cleaning and sanitizing all shared equipment and touchable
9 surfaces between uses; and providing required training to employees,

10 91. Defendants' actions in refusing to allow employees to take paid sick leave as required
11 by the Oakland Emergency Paid Sick Leave Ordinance (Chapter 5.94 of the Oakland Municipal
12 Code) and the Oakland Paid Sick Leave Ordinance (Chapter 5.92 of the Oakland Municipal Code)
13 also violates those laws.

14 92. Defendants' actions also constitute "unfair" business practices because they have
15 caused employees of the 4514 Telegraph Avenue restaurant and other McDonald's restaurants, as
16 well as those employees' family members and other community members, to contract COVID-19
17 infections that could have been avoided through reasonably safe practices.

18 93. As a result of Defendants' unfair and unlawful business practices, Defendants have
19 gained an unfair competitive advantage over other restaurants that adequately protect the health and
20 safety of their employees, customers, and the public, and have reaped and continue to reap unfair
21 and illegal profits at the expense of Plaintiffs and members of the public. Defendants should be
22 made to disgorge their ill-gotten gains and to restore them to Plaintiffs.

23 94. As a result of Defendants' unfair and unlawful business practices, Plaintiffs have lost
24 money or property.

25 95. Defendants' unfair and unlawful business practices entitle Plaintiffs to seek preliminary
26 and permanent injunctive relief, restitution, disgorgement of profits, interest, penalties, attorneys'
27 fees and expenses pursuant to Code of Civil Procedure § 1021.5, and costs of suit.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION
Oakland Emergency Paid Sick Leave Ordinance
[Oakland Municipal Code § 5.94.100]
(Brought by Plaintiffs Y. Osoy, Lambert, Orozco and Garcia Against All Defendants)

96. Plaintiffs incorporate herein by specific reference as though fully set forth the allegations in paragraphs 1 through 95.

97. Under Oakland’s Emergency Paid Sick Leave Ordinance (OMC Chpt. 5.94), effective May 12, 2020, employers including Defendants are required to immediately provide their full-time and part-time employees with two weeks of Emergency Paid Sick Leave.

98. Emergency Paid Sick Leave may be used by employees who are subject to a COVID-19-related quarantine or isolation order, are diagnosed or experiencing symptoms of COVID-19 and seeking a medical diagnosis, have been advised by a health care provider to quarantine, is of an age or has a health condition that renders them especially vulnerable to COVID-19 complications, or are caring for family members diagnosed with or experiencing COVID-19 symptoms or who are at home due to school or childcare closure. OMC § 5.94.030(B).

99. Payment for this leave must be provided “no later than the payday for the next regular payroll period” and not more than 14 days after Emergency Paid Sick Leave is taken. OMC §5.94.030(A)(b).

100. This Emergency Paid Sick Leave is in addition to any sick leave that employees may accrue including under Oakland Municipal Code section 5.92.030, and an employee may elect to use Emergency Paid Sick Leave before using any other such leave.

101. Employers may not retaliate against an employee’s use of sick leave, or otherwise interfere with the necessary and critical use of leave. OMC §§ 5.94.080(A),(B), 5.92.050(A.)

102. Defendants violated the Emergency Paid Sick Leave Ordinance by refusing to allow employees to take paid sick leave when they were experiencing symptoms of COVID-19 and seeking a medical diagnosis, were caring for family members diagnosed with or experiencing COVID-19 symptoms, or had been in close contact with someone who was infected or likely infected with COVID-19.

1 103. Defendants' violation of the Emergency Paid Sick Leave Ordinance Failure may
2 result in penalties, restitution, injunctive relief, and reasonable attorney's fees and costs. OMC §§
3 5.92.050, 5.94.100.

4 **FOURTH CAUSE OF ACTION**
5 **Oakland Paid Sick Leave Ordinance**
6 **[Oakland Municipal Code § 5.92.030]**
7 **(Brought by Plaintiffs Y. Osoy, Lambert, Orozco and Garcia Against All Defendants)**

8 104. Plaintiffs incorporate herein by specific reference as though fully set forth the
9 allegations in paragraphs 1 through 103.

10 105. Under the Oakland Paid Sick Leave Ordinance (Chapter 5.92), employees accrue on
11 hour of paid sick leave for every 30 hours worked, up to a cap of 72 hours. OMC § 5.92.030(A).

12 106. Employees may use such sick leave when ill or injured; for the purpose of receiving
13 medical care, treatment, or diagnosis; or to aid or care for certain relatives when they are ill or
14 injured or receiving medical care, treatment, or diagnosis. OMC § 5.92.030(B)(1).

15 107. Employees may not be required to find a replacement in order to take sick leave.
16 OMC § 5.92.030(B)(2).

17 108. Defendants violated the Oakland Paid Sick Leave Ordinance by denying employees
18 requested sick leave and by requiring employees to find replacements in order to take sick leave.

19 109. Defendants' violation of the Paid Sick Leave Ordinance Failure may result in
20 penalties, restitution, injunctive relief, and reasonable attorney's fees and costs. OMC §§ 5.92.050.

21 **FIFTH CAUSE OF ACTION**
22 **Declaratory Judgment**
23 **[Cal. C.C.P. §1060 et seq.]**
24 **(Brought by All Plaintiffs Against All Defendants)**

25 110. Plaintiffs incorporate herein by specific reference as though fully set forth the
26 allegations in paragraphs 1 through 109.

27 111. An actual controversy has arisen and now exists between the parties relating to the
28 legal rights and duties of the parties as set forth above, for which Plaintiffs desire a declaration of
rights and other relief available pursuant to the California Declaratory Judgment Act, C.C.P. §
1060 et seq.

1 112. A declaratory judgment is necessary and proper in that Plaintiffs contend that
2 Defendants have committed and continues to commit the violations set forth above and
3 Defendants, on information and belief, will deny that they have done so and/or that they will
4 continue to do so.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiffs, individually and on behalf of all other persons similarly situated,
7 respectfully pray for relief against Defendants and DOES 1 through 100, inclusive, and each of
8 them, as follows:

9 1. For preliminary and permanent injunctive relief enjoining Defendants from continuing
10 to engage in, and from refraining from engaging in, the wrongful acts, omissions, and practices
11 alleged herein whose commission and omission constitute a public nuisance, unfair business
12 practice, and/or violation of Oakland law;

13 2. For a declaration that Defendants have committed a public nuisance and unfair business
14 practices by the wrongful acts, omissions, and practices alleged herein whose commission and
15 omission constitute a public nuisance and unfair business practices;

16 3. For compensatory damages in an amount to be ascertained at trial;

17 4. For restitution of all monies due to Plaintiffs as well as disgorged profits from the unfair
18 and unlawful business practices of Defendants;

19 5. For penalties available under the law;

20 6. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure
21 § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;

22 7. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
23 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
24 providing for pre-judgment interest; and

25 8. For such further relief that the Court may deem just and proper.

26 DATED: June 16, 2020

Respectfully submitted,

27 MICHAEL RUBIN
28 STACEY M. LEYTON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BARBARA J. CHISHOLM
CORINNE F. JOHNSON
Altshuler Berzon LLP



By: _____
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs Yamilett Olimara Osoy Hernandez, Angely Rodriguez Lambert, Maria Orozco, Marcos Ricardo Garcia Giron and Edgar Esteban Sazo Osoy hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: June 16, 2020

Respectfully submitted,

MICHAEL RUBIN
STACEY M. LEYTON
BARBARA J. CHISHOLM
CORINNE F. JOHNSON
Altshuler Berzon LLP



By: _____
Attorneys for Plaintiffs