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Cook County, IL

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2020CH04247

**IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS, COUNTY DEPARTMENT,  
CHANCERY DIVISION**

Taynarvis Massey, Maria Villasenor, )  
Noemi Villasenor, Sujey Figueroa, )  
Edwin Pliego, Truvon Turner, )  
Jayvonna Gardley, Ryan Freeman and )  
Joyce Freeman, )

Plaintiffs, )

v. )

McDonald's Corporation, )  
McDonald's USA, LLC, )  
McDonald's Restaurants of Illinois, Inc., )  
Lexi Management LLC, and DAK4, LLC )

Defendants. )

9281603

Case No. 2020CH04247

CLASS ACTION  
INJUNCTION

David P. Dean\*  
Daniel M. Rosenthal\*  
Ryan E. Griffin\*  
Michael P. Ellement\*  
JAMES & HOFFMAN, P.C.  
1130 Connecticut Ave. NW, Suite 950  
Washington, DC 20036  
Tel: (202) 496-0500  
Fax: (202) 496-055  
Firm I.D. Number: 64277  
Email: dmrosenthal@jamhoff.com  
regriffin@jamhoff.com

Barry M. Bennett  
Stephen A. Yokich  
Elizabeth L. Rowe  
DOWD, BLOCH, BENNETT, CERVONE  
AUERBACH & YOKICH  
8 South Michigan Avenue, 19th Floor  
Chicago, Illinois 60603  
Tel: (312) 372-1361  
Fax: (312) 372-6599  
Firm I.D. Number: 12929  
Email: bbennett@laboradvocates.com  
syokich@laboradvocates.com

\*Registered under Rule 707

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**COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiffs Taynarvis Massey, Maria Villasenor, Noemi Villasenor, Ryan Freeman, Joyce Freeman, Truvon Turner, Jayvonna Gardley, Sujey Figueroa, and Edwin Pliego, on behalf of themselves and all others similarly situated, state as their complaint against Defendants McDonald’s Corporation, McDonald’s USA, LCC, McDonald’s Restaurant of Illinois, Inc., Lexi Management LLC, and DAK4, LLC.

**JURISDICTION AND VENUE**

1. This complaint alleges violations of Illinois common law for maintaining a public nuisance and for negligence. This Court maintains jurisdiction over this action under 735 Ill. Comp. Stat. 5/2-209(a)(1), (2), and (3), because Defendants have transacted business within Illinois, committed tortious acts within Illinois, and own, use, or possess real estate situated within Illinois.

2. Venue is proper in this court under 735 Ill. Comp. Stat. 5/2-101 because Defendants are residents of this county and the facts underlying this complaint substantially occurred in this county.

**INTRODUCTION**

3. Plaintiffs Taynarvis Massey, Maria Villasenor, Truvon Turner, Ryan Freeman, and Sujey Figueroa, are workers at McDonald’s restaurants in Cook County—a county ranking first in the United States in reported cases of COVID-19 and fourth in reported deaths. These plaintiffs are required, as a condition of their employment, to work in close proximity to other workers and customers, each of whom may carry the deadly virus even while showing no symptoms. As discussed below, however, Defendants are failing to take

important steps to contain the virus, such as providing adequate protective equipment, hand sanitizer, and safety training for employees, or enforcing safety protocols.

4. Plaintiffs Jayvonna Gardley, Noemi Villasenor, Edwin Pliego, and Joyce Freeman live with McDonald's workers. Although they do not work in McDonald's restaurants, they are likely to suffer the consequences of infections originating in the workplace. Not only may they be forced to care for—or grieve—a sick relative, but they themselves risk infection given the highly contagious nature of the disease.

5. Plaintiffs bring this case because, in the face of these severe risks, the steps Defendants are taking to contain COVID-19 are plainly inadequate. Defendants have a responsibility to their workers, customers, and the public to ensure that the restaurants do not become a hub for spread of the virus. Recognizing this obligation, McDonald's has purported to adopt a comprehensive and effective response to COVID-19, on a centralized national basis. Yet, at the stores where the worker plaintiffs are employed, McDonald's has failed to take adequate steps in response to the pandemic. These stores are operating in disregard of expert recommendations and government guidance on how to best protect workers and customers from spread of the disease.

6. Defendants' deficient maintenance of the McDonald's restaurants constitute a public nuisance, and their actions are negligent under Illinois law. Plaintiffs seek only declaratory and injunctive relief to order Defendants to adhere to their legal responsibilities, and provide a safe working environment.

## PARTIES

7. McDonald's Corporation is a Delaware corporation with its principal place of business located at 110 North Carpenter Street, Chicago, Illinois. It operates and franchises McDonald's restaurants.

8. McDonald's USA, LLC, is a Delaware corporation with its principal place of business located at 110 North Carpenter Street in, Chicago. It is a wholly owned subsidiary of McDonald's Corporation. It franchises McDonald's restaurants (referred to as "Franchise Stores") and operates other McDonald's restaurants through wholly-owned subsidiaries (referred to as "Corporate Stores").<sup>1</sup>

9. McDonald's Restaurant of Illinois, Inc., is an Illinois corporation with its principal place of business in Illinois. It is a wholly-owned subsidiary of McDonald's USA LLC and operates Corporate Stores in Illinois, including the Corporate Stores located at 2438 W. Cermak Rd and 3867 S. Archer Ave. in Chicago.

10. As described further below, Franchise Stores are generally located on land and in buildings owned by McDonald's and are operated pursuant to strict requirements imposed by McDonald's.

11. Defendant Lexi Management LLC, is an Illinois corporation that owns and operates a Franchise Store at 207 E. 35 St. in Chicago.

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<sup>1</sup> On information and belief, Defendants McDonald's Corporation and McDonald's USA LLC jointly run the McDonald's system in the United States. We refer to these entities collectively as "McDonald's." We use the term "McDonald's restaurants" to refer to restaurants operated under the McDonald's brand. Many McDonald's restaurants are operated under franchise agreements with McDonald's, and we refer to these restaurants at times as "Franchise Stores." Other McDonald's restaurants are operated by wholly-owned subsidiaries of McDonald's, and we refer to these restaurants at times as "Corporate Stores."

12. Defendant DAK4, LLC, is an Illinois corporation that owns and operates a Franchise Store at 10320 S. Kedzie Ave in Chicago.

13. Plaintiff Taynarvis Massey is a resident of Illinois. She works at the McDonald's restaurant at 207 E. 35th St. in Chicago.

14. Plaintiff Ryan Freeman is a resident of Illinois. He works at the McDonald's restaurant at 207 E. 35th St. in Chicago.

15. Plaintiff Joyce Freeman is Ryan Freeman's mother, and they live together.

16. Plaintiff Maria Villasenor is a resident of Illinois. She works at the McDonald's restaurant at 2438 W Cermak Rd in Chicago.

17. Plaintiff Noemi Villasenor is Maria Villasenor's daughter, and they live together.

18. Plaintiff Truvon Turner is a resident of Illinois. He works at the McDonald's restaurant at 10320 S. Kedzie Ave. in Chicago.

19. Plaintiff Jayvonna Gardley is Turner's girlfriend, and they live together.

20. Plaintiff Sujeý Figueroa is a resident of Illinois. She works at the McDonald's restaurant at 3867 S. Archer Ave. in Chicago.

21. Plaintiff Edwin Pliego is Sujeý Figueroa's son, and they live together.

## **FACTUAL ALLEGATIONS**

### **I. The COVID-19 Pandemic**

22. COVID-19 is an infectious respiratory disease caused by a novel coronavirus. If a person is infected with the disease, it can cause serious long-term health complications, including inflammation in the lungs, clogging the air sacs in the lungs, and limiting the

body's oxygen supply, along with blood clots, organ failure, intestinal damage, heart inflammation, problems with the liver, neurological malfunction, and acute kidney disease.

23. To date, COVID-19 has caused over 90,000 reported deaths in the United States. There have been more than 1.5 million confirmed cases of infection across the country.

24. Cook County has been hit particularly hard. According to data maintained by Johns Hopkins University, a leading source of public health data, Cook County ranks first among U.S. counties in reported cases of infection and fourth in deaths. Statewide, Illinois has the third highest number of cases of any state, and the sixth highest number of deaths to date. As of May 17, 2020, the Illinois Department of Public Health reports there have been 94,191 cases in the state, including 4,177 deaths.

25. New cases in Illinois remain high. As recently as May 14, the Illinois Department of Public Health reported 3,239 new cases across the state, and 138 new deaths, in a single day.<sup>2</sup> Since May 14, at least 1,500 people have tested positive each day, and there have been between 48 and 130 additional deaths each day.<sup>3</sup>

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<sup>2</sup> Illinois Department of Public Health, "Public Health Officials Announce 3,239 New Cases of Coronavirus Disease," May 14, 2020, available at: <https://www.dph.illinois.gov/news/public-health-officials-announce-3239-new-cases-coronavirus-disease>.

<sup>3</sup> Illinois Department of Public Health, "Coronavirus Disease 2019 (COVID-19) in Illinois Test Results," available at <http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus>.

26. The McDonald's restaurants at issue in this complaint are located in zip codes with some of the highest number of infections in Chicago and its surrounding suburbs.<sup>4</sup>

27. On May 11, Illinois Governor J.B. Pritzker announced that projections show that statewide infections are not likely to peak until mid-June.<sup>5</sup>

28. Some populations are especially vulnerable to the consequences of COVID-19, including individuals 65 years and older and others of all ages with underlying medical conditions, such as people with lung disease, asthma, heart conditions, severe obesity, diabetes, kidney or liver disease and people who are immunocompromised.

29. COVID-19 is highly contagious. The most common ways for COVID-19 to spread are through: (1) close interaction with an infected person that allows the virus to spread through airborne particles or via aerosolized droplets, which are secretions from talking, coughing and sneezing; or (2) contact with a contaminated surface.

30. Spread is more likely when people are in close contact with one another for sustained periods of time (i.e., within about 6 feet of each other for longer than 10 minutes).

31. COVID-19 may be spread by a person who is not showing symptoms or showing only mild symptoms. For that reason, The Centers for Disease Control and Prevention (CDC) and other health experts have recommended that all individuals take

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<sup>4</sup> "COVID-19 cases in Illinois by ZIP code: Search for your neighborhood," Chicago Tribune, available at: <https://www.chicagotribune.com/coronavirus/ct-viz-covid-19-cases-by-zip-code-20200407-aikakoyycje4fbqvferzjffkg4-htmlstory.html>.

<sup>5</sup> Kristen Thometz, "Pritzker: Projections Show Illinois Reaching COVID-19 Peak as Late as Mid-June", WTTW, May 11, 2020, available at: <https://news.wttw.com/2020/05/11/pritzker-projections-show-illinois-reaching-covid-19-peak-late-mid-june>.

steps to avoid close contact with others, even those who may not appear infected, to avoid transmission—a process known as “social distancing.”

32. It may take as long as 14 days for the disease to incubate, and therefore an infected person may not begin showing symptoms for up to two weeks after infection.

33. Recent research published by the CDC suggests that a single person with COVID-19 is likely to infect five or six other individuals absent aggressive social distancing practices.<sup>6</sup>

34. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

35. On March 13, 2020, President Donald Trump declared a national state of emergency as a result of the disease and its rapid spread.

36. The World Health Organization, the CDC, and virtually every level of government have recognized that the only way to minimize casualties from COVID-19 is to slow the disease’s spread, primarily by limiting human-to-human contact or, where that is impossible, taking other preventative measures.

37. The CDC has recognized the unique risks posed to food retail workers and has released safety guidance for employers operating food retail establishments to prevent the transmission of COVID-19.<sup>7</sup>

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<sup>6</sup> See “High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2,” Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian Ke, available at [https://wwwnc.cdc.gov/eid/article/26/7/20-0282\\_article?deliveryName=USCDC\\_333-DM25287](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287).

<sup>7</sup> See “What Grocery and Food Retail Workers Need to Know about COVID-19,” CDC, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/grocery-food-retail-workers.html>.



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

39. The worker plaintiffs face these risks because they often work in close contact with their colleagues and are forced to be in close contact with customers. As compared to other businesses, the McDonald’s business model poses a special risk. Because McDonald’s provides quick service food with a high customer volume, its workers perform their duties in a cramped, assembly-line style kitchen that leaves little room to distance from co-workers. Further, McDonald’s drive-thrus and counter service often require close interaction between workers and customers, as customers place orders, exchange payment, and workers hand customers their order. As discussed further below, because McDonald’s workers are unable to distance themselves from their colleagues while on the job, it is all the more important for workers to have access to necessary personal protective equipment.

## **II. State and federal guidelines for business response to COVID-19**

40. On April 30, 2020, Illinois Governor JB Pritzker issued an executive order, extending his prior executive order issued March 20 and stating, among other things:

- a. All individuals must remain at home or their primary place of residence, with certain exceptions outlined in the order;
- b. All individuals must wear a face covering when in public or when working and unable to maintain a safe social distance from others;

- c. Retail stores designated as essential businesses under the order must to the greatest extent possible provide face coverings to all employees who are not able to maintain a minimum of a six-foot social distance at all times and communicate with customers through signage about social distancing requirements<sup>8</sup>; and
- d. All essential businesses that remain open must take proactive measures to ensure compliance with social distancing requirements, including where possible designating six-foot distances between people, provide hand sanitizer and sanitizing products, establish separate operating hours for vulnerable populations, and provide face coverings and other personal protective equipment.

41. On May 1, 2020 the Health Commissioner for the City of Chicago reissued an order implementing the Governor's stay-at-home order. The Order stated, in part, "In order to stop the devastating spread of COVID-19, all Chicagoans must practice a strict and disciplined adherence to stay-at-home and social distancing requirements."

42. The CDC has issued guidance specific to food retailers, as well as general guidance for all businesses open during the pandemic.<sup>9</sup>

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<sup>8</sup> McDonald's restaurants are essential businesses under the Order because they are "[r]estaurants [or] other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out."

<sup>9</sup> See "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)" CDC, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

43. The CDC's guidance for food retail establishments that remain open during the pandemic recommends several steps that the establishments should take to protect employees' safety, including:
- a. Actively encourage sick employees to stay home;
  - b. Sick employees diagnosed with COVID-19 should not return to work until they meet CDC criteria for discontinuing home isolation, in consultation with healthcare providers and state and local health departments;
  - c. Provide employees with accurate information about COVID-19, how it spreads, and risk of exposure;
  - d. Implement specific policies to minimize contact with customers and other workers for employees who may be at higher risk for serious illness, such as older adults and those with chronic medical conditions;
  - e. Provide training to employees on proper hand washing practice and other preventative measures;
  - f. Provide employees with access to soap, clean running water, and materials for drying their hands, and provide alcohol-based hand sanitizers containing at least 60% alcohol at stations around the establishment for use by both workers and customers;
  - g. Institute measures to physically separate and increase distance between employees, other coworkers, and customers;
  - h. Place signage throughout the establishment, at entrances, in restrooms, and in breakrooms to remind employees and customers to maintain distances of 6 feet from others;

- i. Place visual cues such as floor decals, colored tape, or signs to indicate to customers where they should stand during check out;
- j. Remove or rearrange chairs and tables or add visual cue marks in employee break rooms to support social distancing practices between employees. Identify alternative areas such as closed customer seating spaces to accommodate overflow volume;
- k. Place warning posters that encourage customers and employees to stay home when sick, and to observe good hygiene guidance;
- l. Provide tissues and no-touch disposal receptacles for use by employees;
- m. Clean and disinfect frequently touched surfaces regularly using disinfectant solutions, including reach-in refrigerator units and employee break rooms;
- n. Provide disposable disinfectant wipes, cleaner, or spray so employees can wipe down frequently touched surfaces;
- o. Implement flexible sick leave and supportive policies and practices. Consider drafting non-punitive emergency sick leave policies if sick leave is not offered to some or all employees. Employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or return to work.
- p. Provide information on who to contact if employees become sick. If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).

q. Implement a system in which relief workers rotate into the cashier station to allow cashiers to leave the station to wash their hands regularly.

44. The CDC also recommends that all Americans wear cloth face coverings in public settings where other social distancing measures are difficult to maintain.<sup>10</sup>

45. The Illinois Department of Public has additionally issued guidance regarding food service during the COVID-19 pandemic that repeats many of the same recommendations from the CDC.

**III. McDonald's purports to have implemented a comprehensive, centralized, and effective response to COVID-19 at all McDonald's restaurants for the benefit of workers and customers.**

46. To reassure workers and customers and to protect and burnish its brand, McDonald's has announced that it is controlling and coordinating a comprehensive response to the disease on a centralized national basis.

47. McDonald's issued a detailed statement about its response to COVID-19 on April 16, 2020. In that statement, McDonald's said it was "committed to staying open" and, in doing so, recognized "we have a responsibility to our people" including to "proactively monitor the impact of the coronavirus, [and] continuously mak[e] changes to processes and restaurant operations with safety top of mind."

48. According to the April 16 statement, McDonald's is "incredibly focused on the ongoing efforts to keep [employees] safe." According to an accompanying infographic, McDonald's "number one priority is the health and safety of our employees and customers,

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<sup>10</sup> See "Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission," CDC, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

which guides our decision-making.” McDonald’s said it had “quickly incorporated additional precautionary measures, procedures, recommendations and resources with the safety and protection of restaurant employees and customers top of mind.”

49. According to the April 16 statement, McDonald’s actions were “informed by guidance from both our own third-party contagious disease experts and the CDC.”

McDonald’s added that, “[a]s the expert guidance has evolved, we have quickly adjusted our procedures, recommendations and resources provided to the restaurants.”

50. According to the April 16 statement, McDonald’s was coordinating a national response by “staying in constant communication with our franchisees to ensure our efforts are always aligned.”

51. The April 16 statement and accompanying infographic lays out several specific actions that McDonald's had taken and was committed to taking:

- a. Securing non-medical grade masks for restaurant employees and sending those masks “to areas with the greatest need” with more to follow. It “strongly encourage[ed] the use of DIY masks” in restaurants that did not have masks for workers.
- b. Taking “many steps to ensure the highest standards of restaurant cleanliness and employee hygiene and well-being.”
- c. Moving “[a]ll restaurants . . . to a limited menu in early April to simplify operations in our kitchens and for our crew.”
- d. “[M]aking continuous enhancements to bolster our already robust hygiene standards:
  - Increasing the stock of sanitizing hand gel dispensers

- Increasing the cadence of sanitization of all high touch surfaces, cleaned every two hours now
  - Encouraging rigorous, hourly hand-washing routines
  - Implementing contactless operations procedures
  - Increasing daily cleaning efforts and disinfection guidelines”
- e. “[C]ontinuously evolving our restaurant procedures in accordance with CDC guidance:

- Requiring the use of gloves by food prep and service area employees, including those working in the drive-thru and front counters, at all restaurants.
- Continuing the installation of protective panels on counters and in drive-thru as part of our contactless operations
- Utilizing floor decals to encourage customers to adhere to social distancing practices, as well as guidelines for maintaining social distancing behind the counter
- Sourcing more than 100 million non-medical-grade masks that will be distributed to both company-owned and franchisee restaurants across the U.S., starting with areas of highest need.”

52. The April 16 statement followed earlier statements discussing the McDonald’s centralized national response to COVID-19. In a March 20 statement, for example, under the heading, “Supporting franchisees’ efforts to serve their communities & support their crews” McDonald’s stated: “We are managing this crisis together, as a McDonald’s System, which is what makes us strong.” The statement goes on to say, under the heading “Supporting our restaurant employees in a time of need” that: “How we act—and what we do—as a System directly translates into how we take care of our people. As part of our commitment to the highest standards of cleanliness, we have released guidance to restaurants around enhanced measures of hygiene and handwashing.”

53. David Tovar, vice president of U.S. communications at McDonald's USA, told Business Insider, "We have secured thermometers and we're in the process now of quickly making them available to all of our restaurants."

54. In May 2020, McDonald's reportedly distributed a 59-page guide to franchisees outlining procedures for safely operating dining rooms across the country.

55. The guide states that it establishes the "company policy" for Corporate Stores. As to franchisees, the guide states that they "make their own decisions and policies." But the guide nevertheless informs franchisees of numerous "required" policies, addressing matters such as social distancing, use of masks and gloves, use of hand sanitizer, and much more.

56. Even before the pandemic, McDonald's maintained control over the health and safety policies of McDonald's restaurants, which it enforces through its contractual arrangements and through its authority as a landowner and landlord. McDonald's controls all policies and practices at its Corporate Stores. As to Franchise Stores, franchise owners are required to sign a franchise agreement requiring them to "employ only those methods of food handling and preparation which McDonald's may designate from time to time." On information and belief, McDonald's maintains the contractual authority based on its assessment of the health and safety risks at its restaurants, along with other factors, to close restaurants, set their hours of operations, and set what services will be provided at its restaurants.

57. Franchises are required to use the McDonald's Operations and Training Manual, which mandates operational procedures, including and mandating that franchisees follow its standards for "Quality, Service, and Cleanliness." Franchises are required to use



only equipment meeting standards established by McDonald's and either from McDonald's or one of its approved suppliers. And McDonald's controls the physical design of McDonald's restaurants, enforcing such control through the franchise agreement and through its status as landlord to the property on which McDonald's restaurants are located.

58. McDonald's substantially controls training for the workers at McDonald's restaurants, including training on policies that affect the health and safety of visitors to its restaurants. McDonald's operates Hamburger University, the training center for the worldwide McDonald's System. The franchise agreement gives McDonald's authority to mandate training at Hamburger University "or at such other training center as may be designated by McDonald's from time to time."

**IV. The McDonald's restaurants at issue here have remained open during the pandemic but have provided inadequate safety equipment, guidance, and training to protect employees and the public from the spread of COVID-19**

59. Contrary to their promises, Defendants have failed to take proper precautions to protect employees, including the worker plaintiffs, and the public, from the spread of COVID-19. McDonald's and the defendant franchisees have failed to implement government guidance and expert recommendations at the stores where the worker plaintiffs are employed. As a result, Defendants have exposed McDonald's workers and the public to an increased risk of infection.

60. For example, at the McDonald's restaurant at 186 W. Adams St., managers tightly and arbitrarily limited the supply of gloves and hand sanitizer, going so far as to put them in locked storage cabinets. When employees requested gloves, managers denied access, accusing workers of being wasteful or trying to steal them. Managers told workers to reuse their gloves throughout their shifts. Meanwhile, managers allowed members of the

public to enter the restaurant to use the restroom, but the store took no additional measures to ensure the restrooms were sanitized adequately.

61. At another McDonald's restaurant, at 1637 W. 95th St., managers told workers they do not need to physically distance as long as they keep their conversations or close physical contact to less than 10 minutes. At least one worker at the store tested positive for COVID-19, but managers failed to inform other workers, and provided no information to employees on training on safety protocols. On the contrary, a manager instructed workers not to discuss employee COVID-19 infections and absences with their co-workers.

62. McDonald's workers in the Chicago area have filed at least four complaints with the US Occupational Safety and Health Administration (OSHA) based on the unsafe working conditions at various McDonald's restaurants. OSHA has declined to do on-site inspections at the restaurants and has not ordered McDonald's or the franchise store operators to remedy the serious health and safety concerns raised by the workers. At the 186 W. Adams location discussed above, workers filed an OSHA complaint. OSHA sent a letter to the McDonald's restaurant and asked it to investigate the employee's complaints, but OSHA has not done an inspection and the matter remains open.

63. According to news reports, OSHA has been overwhelmed with complaints from workplaces across the country.<sup>11</sup> Further, on April 13, 2020 the Department of Labor issued guidance instructing OSHA regional offices to deprioritize investigations and site

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<sup>11</sup> "Thousands of OSHA complaints filed against companies for virus workplace safety concerns, records show," Peter Whoriskey, Jeff Stein, and Nate Jones, The Washington Post, April 16, 2020, available at <https://www.washingtonpost.com/business/2020/04/16/osha-coronavirus-complaints/>.

visits at “non-healthcare and non-emergency response establishments.”<sup>12</sup> On April 16, 2020 the Department of Labor issued further guidance instructing OSHA regional offices to limit the use of citations and to accept employers’ “good faith” attempts to comply with regulations during the pandemic.<sup>13</sup>

64. According to OSHA’s public enforcement data, its offices with jurisdiction over Chicago have conducted no COVID-19 related inspections in the fast food industry.

**A) McDonald’s restaurant at 207 E. 35th St. in Chicago**

65. Plaintiffs Taynarvis Massey and Ryan Freeman work at the McDonald’s restaurant at 207 E. 35 St. in Chicago.

66. Massey tested positive for COVID-19 on April 22, 2020.

67. A co-worker told Massey that managers never informed workers who worked with Massey that she was infected. The co-worker told Massey that she only learned that Massey was infected through a Facebook post by Massey.

68. Prior to Massey becoming infected, several other managers and workers at the restaurant took prolonged sick leave from work. Specifically, Massey’s manager was absent from work beginning around March 7, 2020, for approximately one week. Around mid-April, another manager was on leave for about a week. The manager returned to work around April 15. A few days later, on April 20, Massey felt suddenly ill at work. She went to

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<sup>12</sup> “Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19),” Patrick J. Kapust, Department of Labor, April 13, 2020, available at <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>.

<sup>13</sup> “Discretion in Enforcement when Considering an Employer’s Good Faith Efforts During the Coronavirus Disease 2019 (COVID-19) Pandemic,” Patrick J. Kapust and Scott Ketcham, April 16, 2020, available at <https://www.osha.gov/memos/2020-04-16/discretion-enforcement-when-considering-employers-good-faith-efforts-during>.

the hospital on April 22, and tested positive for COVID-19. She informed her manager, who told her to stay home for the week, without pay.

69. Despite the two managers being sick in March and April, managers at the restaurant made no announcements about likely COVID-19 infections in that time period, and did not provide any instructions to employees regarding taking self-quarantine measures.

70. Massey returned to work on April 27 or 28. She gave her manager a copy of her test results. The manager allowed her to return to work.

71. Since Massey returned, one worker, who has asthma, passed out outside the store right after her shift. She later tested positive for COVID-19.

72. Other workers have also been absent from the restaurant over the course of the last month, but managers have not confirmed whether the workers are on sick leave.

73. On May 12, Massey overheard two supervisors discussing another worker who had been infected with COVID-19. Another worker asked the two supervisors who the worker was. The supervisors replied that the worker should mind her own business.

74. Throughout the pandemic, the managers at Massey's and Freeman's McDonald's location have provided no information to workers about co-workers who were or may have been infected with COVID-19. Further, managers have not given workers any other information about the disease or mitigation protocols other than to go home if they start feeling sick.

75. At the store where Massey and Freeman work, management has not implemented any physical distancing requirements. Workers often must work within six feet of each other.

76. At the store where Massey and Freeman work, Defendants only provided masks beginning the week of May 4.

77. Freeman lives with Plaintiff Joyce Freeman, who is his mother.

**B) McDonald's restaurant at 2438 W Cermak Rd in Chicago**

78. Plaintiff Maria Villasenor works at the McDonald's restaurant at 2438 W Cermak Rd in Chicago.

79. At the store where Villasenor works, employees constantly work in close quarters in the kitchen, making it impossible to remain six feet apart.

80. Villasenor learned from a co-worker that the co-worker was out sick in mid-March for two weeks. But a manager told the co-worker *not* to get tested for COVID-19, and to instead remain home. The manager did not say anything to the rest of the staff about the worker being sick.

81. At the store where Villasenor works, Defendants only began providing masks and gloves recently, after workers went on strike. However, workers were only given one mask, which they must bring home and then back to work each shift. Many of the masks have become dirty. Also, several workers are not wearing the masks regularly. The restaurant is not currently providing hand sanitizer to workers or customers.

82. Managers have not provided any information on protocols to be followed due to COVID-19. Recently, Defendants posted signs in the restaurant telling employees to keep their distance and wash their hands. But there were no signs or training provided regarding what to do if you feel sick, or instructions on how to properly wear masks or gloves.

83. When Villasenor reported to a manager that other employees weren't wearing masks, the manager told her that the employees should just cover their mouths when they sneeze.

84. Villasenor has not seen any hand sanitizer made available in the store.

85. Villasenor lives with Plaintiff Noemi Villasenor, who is her daughter.

**C) McDonald's restaurant at 3867 S. Archer Ave. in Chicago**

86. Plaintiff Sujey Figueroa works at the McDonald's restaurant at 3867 S. Archer Ave. in Chicago.

87. Figueroa was sick with symptoms consistent with COVID-19 in mid-March. Figueroa went to the hospital. However, at the time, testing was not widely available and so, despite her efforts to get tested, she has been unable to confirm whether she was infected.

88. At the store where Figueroa works, managers continue to staff shifts at pre-pandemic levels, which leads to workers often being within two feet of each other.

89. Managers have not given workers any information about COVID-19 protocols.

90. Managers are not requiring employees to wear masks and gloves. As a result, employees are often not wearing them.

91. Figueroa lives with Plaintiff Edwin Pliego, who is her son.

**D) McDonald's restaurant at 10320 S. Kedzie Ave**

92. Plaintiff Truvon Turner works at the McDonald's restaurant at 10320 S. Kedzie Ave in Chicago.

93. It is impossible for Turner to consistently remain six feet apart from his co-workers, given the current staffing levels. He frequently must work shoulder-to-shoulder with other employees.

94. In late April, Turner felt sick while at work and left his shift early to return home. Turner went to the hospital the next day and was tested for COVID-19. He tested negative, but was told that he should self-quarantine for two weeks because he was exhibiting all of the symptoms of infection.

95. Turner learned from co-workers that management did not inform other employees that he was sick, or take other preventative measures such as increased cleaning of surfaces or advising employees with whom he worked that they should self-quarantine.

96. Only cooks at the restaurant where Turner works are provided gloves; other employees have not been provided gloves.

97. There is no policy that customers entering the store must wear masks, and there are no signs directing customers to wear masks.

98. Plaintiff Jayvonna Gardley is Turner's girlfriend and lives with him full-time.

**V. McDonald's decisions harm the public because those who are infected at a McDonald's restaurant are likely to infect others**

99. Because COVID-19 is highly contagious, a worker or customer infected at a McDonald's restaurant is likely to spread the disease to others, possibly before showing symptoms. Thus, the damage done by inadequate safety practices is not confined to the walls of a restaurant, but instead has broader public health consequences for the Chicago community, the State of Illinois, and the entire country.

100. McDonald's restaurants are some of the busiest in the industry, with the average store generating over \$2.8 million in annual sales volume and serving hundreds of customers per day.

101. The restaurants at issue here are no exception. They are located in some of the most densely populated areas of Chicago. The restaurants continue to serve hundreds of customers per day during the pandemic.

102. While McDonald's has reported a fall in revenue during the pandemic, its sales in April 2020 were still 80% of its sales in April 2019, indicating that its restaurants remain busy.

103. The worker plaintiffs work in close quarters with their co-workers, as the behind-the-counters areas in McDonald's restaurants are often small. This requires workers to often be less than six feet apart from co-workers.

104. The worker plaintiffs frequently have no choice but to be in close proximity with others on their way to and from work. If customers are infected because of a visit to a McDonald's restaurant, they will then return to their daily routine and begin infecting others, who will then infect others, and so on.

105. Defendants also do not provide adequate paid sick leave to employees, thus forcing them to choose between going to work when they feel ill or staying home and forgoing income.

106. When an infected person begins developing symptoms, they may need hospital services. As the number of infected persons increases, the resources that hospitals are able to provide diminishes, and may lead to far reaching public health consequences for those infected by COVID-19 and also for those who need access to other hospital services.



## CLASS ALLEGATIONS

107. Plaintiffs bring this action on behalf of themselves and all others similarly situated (“the Class”), which has two subclasses: (1) All persons who have worked at one of the McDonald’s restaurants identified in Paragraphs 67-97 at any time from April 1, 2020, to the present, (2) All persons who have co-habited with a member of the first subclass at any time from April 1, 2020, to the present.

108. The members of each subclass suffered the same legal violations under the same factual circumstances attributable to Defendants. Specifically, the members of Subclass 1 were forced, as a condition of their employment, to work in restaurants with inadequate protections to prevent the spread of COVID-19. The members of Subclass 2 were exposed to a risk of contracting the disease from the workers. The common questions of law and fact predominate over any question affecting only individual members of the class.

109. The Class seeks the same remedy for the legal violations attributable to Defendants, *i.e.* injunctive and declaratory relief.

110. A class action would be the most efficient way to resolve the Class’s claims, which involve the same questions of law and fact.

111. The number of class members is so numerous that joinder of all members is impracticable. The Class encompasses workers at four restaurants, each of which employs dozens of workers. Those worker cohabitate with an untold number of people. Although the exact number of Class members is unknown, the Class, at a minimum, exceeds 100 people.

112. Plaintiffs will fairly and adequately protect the interest of the Class because their interests are the same as those who are not joined and because they are represented by competent and experienced counsel.

## CAUSES OF ACTION

### **Count One: Claim by all Plaintiffs Against All Defendants for Public Nuisance**

113. McDonald's decision to remain open while simultaneously failing to comply with minimum basic health and safety standards at its restaurants, including guidance from the CDC and other public health standards necessary to stop the spread of COVID-19, is causing, or is reasonably certain to cause, further spread of the disease to Plaintiffs, their family members, McDonald's other employees, and the general public.

114. Because McDonald's provides quick service food with a high customer volume, its workers perform their duties in a cramped, assembly-line style kitchen that leaves little room to distance from co-workers.

115. Spread of the disease because of McDonald's actions is not limited to its own employees and customers. Those who are infected at a McDonald's restaurant will go home to interact with their families and with other members of the public as they undertake their day-to-day activities.

116. Infected persons may not know they are infected for several days, or at all, and therefore may unknowingly spread the disease to others with whom they interact. This is likely to cause further infections throughout the city of Chicago, and also throughout the state of Illinois and the United States as those infected persons travel or infect others who travel.

117. This community spread of COVID-19 will result in disease and possibly death. It will also stress healthcare resources and cause financial harm.

118. There is a public right to be free from significant threats to public health, including outbreaks of infectious diseases.

119. McDonald's current operations constitute a public nuisance because they unreasonably interfere with the common public right to public health, and cause substantial public injury. Its operation has created a significant interference with the public health, the public safety, the public peace, the public comfort, and the public convenience.

120. Due to the highly infectious nature of COVID-19, Defendants' conduct is likely to proximately cause the spread of the disease.

121. The public nuisance causes special harm to Plaintiffs because they are directly exposed to the dangerous working conditions at McDonald's restaurants. The worker plaintiffs not only risk exposure to the disease and the potential deadly health consequences that come with it, but also risk being responsible for spreading the disease to their family members. They will lose their jobs if they do not come to work as ordered, and therefore must expose themselves to the dangerous conditions created by Defendants or risk their livelihood. Plaintiffs who are family members of McDonald's workers cannot avoid exposure to the disease by sheltering in place, like members of the general public. Instead, their risk of exposure comes with living with a McDonald's worker.

122. Plaintiffs seek only injunctive relief to remedy their injuries and to abate the public nuisance created by McDonald's, along with declaratory relief.

123. If injunctive relief is not granted, Plaintiffs face a significant risk of irreparable harm in the form of physical and emotional injuries from the continuing

maintenance of the public nuisance. Indeed, Plaintiffs are vulnerable to severe bodily injury or death from infection caused by the unsafe environment in which they work. Such injuries cannot be compensated adequately by damages or otherwise remedied at law through a damages claim.

124. Administrative or governmental remedies are inadequate to protect Plaintiffs from significant harm. OSHA, the primary government agency tasked with ensuring workplace safety, has deprioritized inspections and enforcement at non-medical workplaces, and has failed to use its available authority to investigate specific and sufficient workers' complaints of these hazards at McDonald's stores in Illinois. The CDC, while able to issue recommendations, does not have independent enforcement authority against businesses that refuse to follow those recommendations. And State and local authorities lack the resources, enforcement mechanisms, and authority to effectively compel compliance with safety standards for employees in their workplaces.

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

**Count Two: Claim by Worker Plaintiffs for Negligence Against McDonald's Corporation and McDonald's USA**

126. Plaintiffs hereby incorporate by reference the allegations in each of the above paragraphs.

127. Plaintiffs Taynarvis Massey, Maria Villasenor, Truvon Turner, Ryan Freeman, and Sujey Figueroa bring this Claim against Defendants McDonald's Corporation and McDonald's USA LLC.

Duty

128. McDonald's voluntarily assumed a duty of care to Plaintiffs with respect to their health and safety, and to limit the spread of infectious disease. As reflected in its public statements, McDonald's has recognized the risk of the spread of COVID-19 in its restaurants and its responsibility to provide a safe working environment.

129. McDonald's also has a duty as a landowner and landlord in light of its control over certain property elements, including whether restaurants remain open and the use of barrier shields at restaurants.

#### Breach

130. McDonald's breached its duty to Plaintiffs when it decided that its restaurants would remain open during the pandemic, but failed to ensure that its restaurants adopted proper procedures and adequate protective equipment, information, and training to prevent the spread of COVID-19.

#### Causation

131. The actions of McDonald's created an unsafe environment in the stores in which Plaintiffs worked. This unsafe environment is likely to cause the spread of COVID-19 to workers.

132. These injuries were foreseeable to McDonald's as demonstrated by its public statements recognizing the dangers of spread of COVID-19 in its restaurants. McDonald's was also put on notice of the specific dangers of COVID-19 to its employees because of the OSHA complaints filed by employees.

#### Injury

133. Plaintiffs suffered significant injuries resulting from the negligence of McDonald's, including exposure to the COVID-19 virus and an increased likelihood of infection.

134. Plaintiffs seek only injunctive relief to remedy their injuries and to prevent future injuries to themselves, their families, McDonald's customers, and the general public.

135. Plaintiffs have a clear and ascertainable right to be free from injuries resulting from the negligence of McDonald's.

136. If injunctive relief is not granted, Plaintiffs face a significant risk of irreparable harm in the form of physical and emotional injuries from continuing acts of negligence. Indeed, Plaintiffs are vulnerable to severe bodily injury or death from infection caused by the unsafe environment in which they work. Such injuries cannot be compensated adequately by damages or otherwise remedied at law through a damages claim.

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

**Count Three: Claim by Worker Plaintiffs for Negligence Against Store Owners**

138. Plaintiffs hereby incorporate by reference the allegations in each of the above paragraphs.

139. Plaintiffs Taynarvis Massey, Maria Villasenor, Truvon Turner, Ryan Freeman, and Sujey Figueroa bring this Claim against Defendants McDonald's Restaurant of Illinois, Inc., Lexi Management LLC, and DAK4, LLC.

140. Each of these Plaintiffs pursues a claim of negligence against the Defendant that employs that Plaintiff.

Duty

141. As a business invitor, land possessor, and employer, each store owner had a duty to protect its workers from unreasonable risks to their health and safety, including the spread of infectious disease.

Breach

142. The store owners breached their duty to Plaintiffs when they implemented the health and safety policies mandated by McDonald's, as set forth in the above paragraphs.

Causation

143. The actions of McDonald's created an unsafe environment in the stores in which these Plaintiffs worked. This unsafe environment is likely to cause the spread of COVID-19 to workers.

144. Plaintiffs' injuries were foreseeable to each store owner due to its knowledge of infection in the Chicago area, including at McDonald's restaurants.

Injury

145. Plaintiffs suffered injuries as set forth in the above paragraphs.

146. Plaintiffs seek no damages from the Franchisee Defendants. Rather, Plaintiffs seek injunctive relief from the Franchisee Defendants.

147. Plaintiffs have a clear and ascertainable right to be free from injuries resulting from the negligence of the Franchisee Defendants.

148. If injunctive relief is not granted, Plaintiffs face a significant risk of irreparable harm in the form of physical and emotional injuries from continuing acts of

negligence. Indeed, Plaintiffs are vulnerable to severe bodily injury or death from infection caused by the unsafe environment in which they work. Such injuries cannot be compensated adequately by damages or otherwise remedied at law through a damages claim.

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

### **Requested Relief**

Wherefore, Plaintiffs seek declaratory relief finding that Defendants are maintaining a public nuisance and have violated Illinois law prohibiting negligence. Plaintiffs further seek an injunction that requires Defendants to:

1. Supply workers with adequate protective equipment, including face coverings and gloves;
2. Cease and desist from forcing workers to reuse face coverings and gloves in a manner that makes them unsafe;
3. Supply hand sanitizer for workers and customers entering the restaurant;
4. Establish and enforce policies that require employees to wear face coverings during their shifts, and require customers entering the restaurant to wear face coverings;
5. Monitor infections among workers and, if an employee experiences COVID-19 symptoms or is confirmed to be infected with COVID-19, inform fellow employees immediately of their possible exposure;



6. Provide employees with accurate information about COVID-19, how it spreads, and risk of exposure, and train employees on proper hand washing practice and other preventative measures established by the CDC.

Respectfully submitted,

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/s/ Daniel M. Rosenthal  
One of Plaintiffs' Attorneys

David P. Dean\*  
Daniel M. Rosenthal\*  
Ryan E. Griffin\*  
Michael P. Ellement\*  
JAMES & HOFFMAN, P.C.  
1130 Connecticut Ave. NW, Suite 950  
Washington, DC 20036  
Tel: (202) 496-0500  
Fax: (202) 496-055  
Firm I.D. Number: 64277  
Email: dmrosenthal@jamhoff.com  
regriffin@jamhoff.com

Barry M. Bennett  
Stephen A. Yokich  
Elizabeth L. Rowe  
DOWD, BLOCH, BENNETT, CERVONE  
AUERBACH & YOKICH  
8 South Michigan Avenue, 19th Floor  
Chicago, Illinois 60603  
Tel: (312) 372-1361  
Fax: (312) 372-6599  
Firm I.D. Number: 12929  
Email: bbennett@laboradvocates.com  
syokich@laboradvocates.com

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