

**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,)	20 CH 4247
and Joyce FREEMAN)	Judge Eve Reilly
)	Calendar 7
Plaintiffs,)	
)	
v.)	
)	
McDONALD’S CORPORATION,)	
McDONALD’S USA, LLC, McDONALD’S)	
RESTAURANTS OF ILLINOIS, INC.,)	
LEXI MANAGEMENT LLC, and DAK4,)	
LLC)	
)	
Defendants.)	

ORDER

This matter comes before the Court on Plaintiffs’ Emergency Motion for Preliminary Injunction. Due notice having been given and Defendants appeared through Counsel. An evidentiary hearing on the preliminary injunction was held via remote proceedings on June 4, 2020, June 10, 2020, June 15, 2020 and June 16, 2020 with Judge Reilly presiding. The Court, having considered Plaintiffs’ Complaint, Plaintiffs’ Emergency Motion for Preliminary Injunction (“PI”), Plaintiffs’ Memorandum of Law in support thereof, Defendants’ Verified Answer, and Defendants’ Memorandum of Law in opposition to Plaintiffs’ Motion; and having considered the evidence submitted by the parties, the testimony of the witnesses and their credibility, and the arguments of counsel, finds the following.

PARTIES

Five plaintiffs are employees of four McDonald's franchises and/or McDonald's Operating Company ("McOpCos"): Taynarvis Massey ("Massey"), Maria Villasenor ("Villasenor"), Sujey Figueroa ("Figueroa"), Truvon Turner ("Turner"), and Ryan Freeman ("Freeman"). Collectively, these Plaintiffs are known as the "Worker Plaintiffs." The remaining four plaintiffs are family members or cohabitants of the McDonald's employees. They are: Noemi Villasenor ("Noemi"), Edwin Pliego ("Pliego"), Jayvonna Gardley ("Gardley") and Joyce Freeman ("Joyce").

McDonald's Corporation ("McDonald's") operates and franchises McDonald's restaurants. Defendant DAK4, LLC ("DAK4") owns and operates the franchise of McDonald's located at 10320 South Kedzie Avenue in Chicago. Plaintiff Turner works at this location. Until June 15, 2020, Defendant Lexi Management LLC ("Lexi") owned and operated the franchise of McDonald's located at 207 E. 35th Street in Chicago. Plaintiffs Massey and Freeman work at this location. Defendant McDonald's Restaurant of Illinois, Inc. ("Restaurant of Illinois") is a wholly-owned subsidiary of Defendant McDonald's USA LLC ("McDonald's USA") and operates Corporate Stores in Illinois including the stores located at 2438 West Cermak Road and 3867 South Archer Avenue, both in Chicago. Plaintiff Villasenor works at the location on West Cermak Road. Plaintiff Figueroa works at the location on South Archer Avenue.

On June 16, 2020, Plaintiffs withdrew their request for a preliminary injunction against Defendant Lexi Management in light of its sale of the McDonald's restaurant at 207 E. 35th Street. Plaintiffs continue to seek a preliminary injunction with respect to the 207 E. 35th Street restaurant against McDonald's Corporation and McDonald's USA and anyone acting in concert with them, which, they argue, would include the new owner.

PROCEDURAL BACKGROUND

On May 19, 2020, Plaintiffs filed a three count Complaint for injunctive relief. Count one is a claim brought by all Plaintiffs against all Defendants for Public Nuisance. Count two is a negligence claim brought by Worker Plaintiffs against McDonald's and McDonald's USA. Count three is a negligence claim brought by Worker Plaintiffs against Lexi, DAK4, and Restaurant of Illinois. On May 22, 2020, Plaintiffs submitted their emergency motion to the Chancery Division's Remote Video Proceedings Email in accordance with Chief Judge Evans' General Order. The Plaintiffs did not seek a temporary restraining order. However, as the subject matter involved worker safety in a global pandemic, the court expedited the matter and Defendants were given until Thursday, May 28, 2020 at 5 p.m. to appear and answer the motion.

Plaintiffs seek injunctive relief through June 30, 2020. This injunctive relief would require Defendants to: (1) provide workers with an adequate supply of face coverings and gloves; (2) supply hand sanitizer for workers and customers entering the restaurant; (3) enforce policies requiring employees to wear face coverings during their shifts and requiring customers entering a store to wear face coverings; (4) monitor infections among workers and, inform an employee experiences COVID-19 symptoms or is confirmed to be infected with COVID-19, inform fellow employees immediately of their possible exposure; and, (5) 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 Center for Disease Control.

FACTUAL BACKGROUND

COVID-19 is a Deadly and Highly Infectious Disease.

COVID-19 has caused a “disaster” in the state of Illinois resulting in “extraordinary sickness and loss of life.” McDonald’s Ex. 62, at 1. On March 9, Illinois Governor JB Pritzker “declared all counties in the state of Illinois as a disaster area in response to the outbreak of COVID-19.” McDonald’s Ex. 62, at 2.

As of May 28, the eve of the first hearing on Plaintiffs’ preliminary injunction motion, COVID-19 had infected 1,698,523 Americans and killed 100,446 Americans. Pl. Ex. 10, at 1. Since then, those numbers have grown by more than half a million infections and 15,000 deaths. See Center for Disease Control (“CDC”), Coronavirus Disease 2019 (COVID-19), Cases in the U.S. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (showing 2,132,321 cases and 116,862 deaths as of June 17, 2020). Worldwide, as of May 29, 2020, there have been more than 5.5 million infections and 350,000 confirmed deaths from COVID-19. McDonald’s Ex. 62, at 1. As of May 29, 2020, COVID-19 had caused “the tragic loss of more than 5,200 Illinoisans” and “wreak[ed] havoc on the physical health of tens of thousands more.” McDonald’s Ex. 62, at 3.

COVID-19 is primarily transmitted through respiratory droplets, which are released when an infected person talks, coughs, or sneezes. 6/10/2020 Hr’g Tr. at 142:9-142:11; 150:12-150:14 (P. Orris). These droplets can land directly in the mouths or noses of people who are nearby and can then be inhaled into the lungs. Pl. Ex. 12, ¶4. Transmission is also possible if a person touches a surface contaminated with respiratory droplets produced by an infected person and then touches his or her eyes, nose, or mouth. Pl. Ex. 12, ¶4. The incubation period for the disease is up to 14 days, which means that it may take up to two weeks for a person who has been

infected to show symptoms of COVID-19. Pl. Ex. 12, ¶5. An infected person will likely be able to transmit the virus to others even prior to showing symptoms or without ever being symptomatic. Pl. Ex. 12, ¶5. According to the CDC, the largest study of COVID-19 showed that 14% percent of infected people suffered severe health effects and 5% suffered critical effects. Pl. Ex. 9, at 2-3. Critical effects include respiratory failure, shock, and multi-organ dysfunction. Pl. Ex. 9, at 2-3. More than 2% of infected people died. Pl. Ex. 9, at 2-3. Absent strong preventive measures, COVID-19 “has the potential to spread rapidly and infect a large fraction of the population, overwhelming healthcare systems.” Pl. Ex. 7, at 8.

The State and Federal Governments Have Issued Orders and Guidance for Limiting the Spread of COVID-19.

The governments of Illinois and the United States have recognized the severe threat posed by COVID-19 and have thus issued orders and guidance for citizens and businesses in an attempt to mitigate the virus’s devastating effects. The most recent applicable order in Illinois is Executive Order 2020-38, effective May 29, 2020. McDonald’s Ex. 62. Paragraph 2.a of the Executive Order requires all Illinoisans to practice social distancing, meaning that they “must at all times and as much as reasonably possible maintain social distancing of at least 6 feet from any other person who does not live with them.” McDonald’s Ex. 62. Paragraph 2.b of the Executive Order requires all Illinoisans to “[w]ear a face covering in public places” when unable to maintain a distance of 6 feet. McDonald’s Ex. 62. This requirement applies “whether in an indoor space . . . or in a public outdoor space where maintaining a 6 foot social distance is not always possible.” McDonald’s Ex. 62.

The Illinois Department of Public Health has provided specific guidance on how Paragraph 2.b of Executive Order applies in the restaurant setting, advising that “[a]ll Illinoisans should wear a[] mask or face covering when . . . [p]icking up food from the drive-thru or

curbside pickup.” Pl. Ex. 25, at 1. Paragraph 3.a of the Executive Order requires all businesses to “ensure that employees practice social distancing.” McDonald’s Ex. 62, at 4. Paragraph 3.a of the Executive Order also requires all businesses to “ensure that employees . . . wear face coverings when social distancing is not always possible.” McDonald’s Ex. 62. Paragraph 3.a of the Executive Order further requires all businesses to “ensure that all visitors (customers, vendors, etc.) to the workplace can practice social distancing; but if maintaining a 6 foot social distance will not be possible at all times, encourage visitors to wear face coverings . . .”.

McDonald’s Ex. 62. Paragraph 6 of the Executive Order requires all businesses to “follow guidance provided or published by the Illinois Department of Commerce and Economic Opportunity [IDCEO] regarding safety measures during Phase 3” and guidance from the Illinois Department of Public Health [IDPH] and local public health departments with respect to social distancing requirements. McDonald’s Ex. 62.

Executive Order 2020-38 does not establish social distancing and mask-wearing as alternative options for businesses, but rather says in Paragraph 3.a that businesses must both ensure social distancing and ensure the wearing of masks by employees when social distancing is not always possible. Limiting the spread of COVID-19 requires that all individuals, not only those known to be infected with COVID-19, maintain adequate social distance and wear masks because the virus can be spread by persons who do not know that they are infected. 6/10/2020 Hr’g Tr. 151:14-153:7 (P. Orris).

LEGAL STANDARD

A party requesting a preliminary injunction must demonstrate: (1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law for the injury; and (4) a likelihood of success on the merits. *People ex rel. Klaeren*

v. Village of Lisle, 202 Ill. 2d 164, 177 (2002). If the four factors for the issuance of a preliminary injunction have been satisfied by the petitioner, “then the court must balance the hardships.” *Makindu v. Illinois High School Association*, 2015 IL App (2d) 141201, ¶31. Additionally, although not a factor the circuit court must consider when deciding whether to issue a preliminary injunction, when the injunction implicates important public interests, the court should consider the effect such injunctive relief might have upon the public. *FOP, Chicago Lodge 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶28. The court should deny injunctive relief where it will cause serious harm to the public without a corresponding great advantage to the movant. *Id.*; *Douglas Theater Corp.*, 188 Ill. App. 3d 573, 579 (1st Dist. 1989).

ANALYSIS

As a preliminary matter, this Court addresses the McDonald's Located at 207 E. 35th Street first as it applies to Defendant Lexi and then as it applies to the new owners. At the hearing on June 15, 2020, Plaintiffs called Paul Harris (“Harris”), the former manager at the 35th Street store. Harris testified that Lexi no longer owned the store. 6/15/2020 Hr’g Tr. 14:23 (P. Harris). On June 16, 2020 Plaintiffs’ counsel informed the Court that it is no longer seeking a preliminary injunction against Defendant Lexi. Therefore, no injunction will be granted against Defendant Lexi. There was testimony that the 35th Street store has a new owner. 6/15/2020 Hr’g Tr. 15:7-9 (P. Harris) However, there was no testimony regarding the new owners nor was any evidence introduced to support a proposition that the new owners were not complying with the Plaintiffs requested relief. Therefore, Plaintiffs’ motion for a preliminary injunction against any new owners of the 35th Street store must be denied.

Likelihood of Success

To show a likelihood of success on the merits, a party must: (1) raise a fair question as to the existence of the right claimed, (2) lead the court to believe that she will probably be entitled to the relief prayed for if the proof sustains her allegations, and (3) make it appear advisable that the positions of the parties stay as they are until the court has an opportunity to consider the merits of the case. *Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 417 (1st Dist. 1987). Plaintiffs allege two claims against Defendants. First, that Defendants' actions and failure to act constitute a public nuisance. Second, that Defendants' actions and failure to act is negligent.

a. Public Nuisance

The elements of a public nuisance are: (1) the existence of a public right; (2) a substantial and unreasonable interference with that right by the defendants; (3) proximate cause; and, (4) injury. *Burns v. Simon Props. Group, LLP*, 2013 IL App (5th) 120325, ¶6.

First, as discussed below in the clearly ascertained right section, there exists a public right to be free from an environment that may endanger public health. *Wilsonville v. SCA Services*, 86 Ill. 2d 1, 28 (1981). Illinois courts have found that public health includes monitoring the spread of infectious diseases. *Heigert v. Riedel*, 206 Ill. App. 3d 556, 562 (5th Dist. 1990).

Next, Plaintiffs are seeking to abate a prospective nuisance; meaning Plaintiffs are seeking this injunction before an outbreak occurs at one of these restaurants. A court does not have to wait for [harm] to happen before it enjoins such a result. *Wilsonville*, 86 Ill. 2d at 27. The Plaintiffs do not have to show that Defendants conduct has affirmatively caused a COVID-19 case; rather, that Defendants actions make a positive case "highly probable." *Wilsonville*, 86 Ill. 2d at 26; see also Pl. Mot. at 31.

Here the Plaintiffs have shown that the possibility of an infection at the stores and injury that would follow are “highly probable.” The testimony from the preliminary injunction hearing has shown that COVID-19 is a threat and that there have been positive COVID tests at two of the McDonald’s at issue in this case and that employees have shown all the symptoms of the COVID-19 but had a negative test result at the other store. 6/4/2020 Hr’g Tr. 65:17-18 (M. Villasenor)(positive test results at the 2438 W. Cermak Road location); 6/16/2020 AM Hr’g Tr. 147:15-17 (O. Salas)(“Q. Two of your employees at Cermak have now tested positive for COVID; is that correct? A. Yes”); 6/15/2020 Hr’g Tr. 226: 7-8, 6/16/2020 AM Hr’g Tr. 23 (A. Huerta)(three positive test results at the 3867 S. Archer Avenue location); Turner Dec. at ¶4, 6/10/2020 Hr’g Tr. 115 (T. Turner)(displayed all of the symptoms of COVID-19 but tested negative at the 10320 S. Kedzie Avenue location).¹

Lastly, to determine here whether the Plaintiffs are likely to succeed on the merits, the court must conduct a factual analysis of each store to determine if a substantial and unreasonable interference with the Plaintiffs rights occurred. In their Emergency Motion for Preliminary Injunction, Plaintiffs listed five alleged interferences by the Defendants: (1) failure to provide workers with an adequate supply of face coverings and gloves; (2) lack of hand sanitizer for workers and customers entering the restaurants; (3) lack of enforcing policies requiring employees to wear face coverings during their shifts and requiring customers entering a store to wear face coverings; (4) failure to 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; and (5) failure to provide employees with accurate information about COVID-19, how it spreads, and risk of exposure, and train employees

¹ After testing negative for COVID-19, Turner’s doctor recommended he self-quarantine at home for two weeks because he was displaying all of the symptoms. Turner Dec. at ¶4.

on proper hand washing practice and other preventative measures established by the Center for Disease Control.

For the purposes of a preliminary injunction this Court must determine what is actually being done in these stores presently. There is no reason to enjoin conduct that has been remedied as it no longer poses a health risk.

McDonald's Located at 10320 South Kedzie Avenue (Defendant DAK 4).

Plaintiffs presented one witness, Truvon Turner ("Turner"), to speak specifically about the McDonald's located at 10320 South Kedzie Avenue, owned by Defendant DAK 4.

Additionally, Plaintiffs presented one expert witness, Dr. Peter Orris ("Dr. Orris"). In response, Defendants presented two witnesses, Sandra Sladin ("Sladin")-Director of Operations for DAK4- and Janitha Knox ("Knox") - Shift Manager of the South Kedzie restaurant. Additionally, Defendants presented two witnesses who spoke to the case as a whole: William Garrett ("Garrett")-Senior Vice President of McDonald's- and an expert witness, Dr. William Lang ("Dr. Lang").

First, this Court analyzes whether McDonald's at 10320 South Kedzie Avenue currently supplies the necessary masks and gloves. First, while Turner testified that at one point McDonald's was not providing gloves, he testified that now are adequate masks for employees to wear at the store. 6/10/2020 Hr'g Tr. 116:20-22 (T. Turner). Further, Sladin testified that their store began receiving masks around May 22, 2020. 6/16/2020 PM Hr'g Tr. 20:3-5 (S. Sladin). Turner testified that employees do not have open access to the gloves. He testified that although employees originally had unlimited access to gloves, they were subsequently moved to the office where access was limited. 6/10/2020 Hr'g Tr. 98:7-10 (T. Turner). Turner also testified that the service employees do not wear gloves and deliver food outside to customers without wearing

gloves. 6/10/2020 Hr'g Tr. 101 (T. Turner). Director of Operations at the South Kedzie store, Sladin confirmed that pre-COVID only cooks at the restaurant were provided with gloves. However, she testified that currently gloves are worn by all employees. 6/16/2020 PM Hr'g Tr. 28, 29 (S. Sladin). Additionally, Shift Manager Knox testified that "there's plenty" of gloves and that the gloves are "located on the front counter, in the grill area right in front of where he [Turner] was standing, and in the office." 6/16/2020 PM Hr'g Tr. 99:11-13 (J. Knox). This testimony was corroborated by photographic evidence. 6/16/2020 PM Hr'g Tr. 76:15-23 (S. Sladin); Pl. Ex. 25. Further, there is also hand sanitizer and handwashing at the store that further mitigates harm in this regard. 6/16/2020 PM Hr'g Tr. 37-38 (S. Sladin). Therefore, Plaintiffs have not shown that the gloves and masks being provided are currently creating an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

Second, we look to see whether the 10320 South Kedzie Avenue store is providing hand sanitizer. Turner testified that there was no hand sanitizer in the dining room. 6/10/2020 Hr'g Tr. 99:12-13 (T. Turner). However, Sladin testified that hand sanitizer is available at the store. 6/16/2020 PM Hr'g Tr. 37:9-16 (S. Sladin). She further testified that a gallon sized hand sanitizer is available to customers at the front counter in "a big pump." 6/16/2020 PM Hr'g Tr. 37:9-16 (S. Sladin). Additionally, Sladin testified that the South Kedzie store has not run out of hand sanitizer since mid-March. 6/16/2020 PM Hr'g Tr. 38 (S. Sladin). The lobby of this store was closed from March 16, 2020 until May 18, 2020. 6/16/2020 PM Hr'g Tr. 84 (S. Sladin). Since McDonald's recommends hand-washing and because hand-sanitizer stations are available at the store, Plaintiffs have not shown that the hand sanitizer provided currently creates an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

The next analysis is whether the way 10320 South Kedzie Avenue monitors infections among workers and informs workers about a positive COVID-19 test causes substantial and unreasonable interference with the Plaintiff's or the public's rights. Turner testified that he has never had his temperature taken or completed a wellness check before working. 6/10/2020 Hr'g Tr. 99-100 (T. Turner). Sladin testified crew members are given temperature checks and that even her temperature is taken when she comes to the store. 6/16/2020 PM Hr'g Tr. 41-43 (S. Sladin); DAK4 Ex. 8. Knox testified that she personally takes Turner's temperature every shift and that employees cannot sign in for their shift without first signing off on the wellness check. 6/16/2020 PM Hr'g Tr. 101-02 (J. Knox). On the issue of monitoring infections, the evidence weighs in favor of the Defendants.

Turner testified that he has never been informed about anyone at the store having contracted COVID-19. 6/10/2020 Hr'g Tr. 103:20-24, 104:1-2 (T. Turner). However, no evidence has been presented to suggest that any worker at the 10320 South Kedzie Avenue store ever tested positive for COVID-19. Sladin testified that if there was a positive COVID-19 test in their store there is a policy in place to look back at the infected crew members' shifts, identify any close contacts and instruct those individuals to self-quarantine, and notify all crew members. 6/16/2020 PM Hr'g Tr. 48:7-24, 49:1 (S. Sladin). Therefore, the Plaintiffs have not shown that the way Defendants monitor and inform Plaintiffs of COVID-19 positive cases are currently creating an environment that would substantially or unreasonably interfere with Plaintiffs' or the public's health.

Next, the Court asks whether 10320 South Kedzie Avenue is providing accurate information about COVID-19 (how it spreads, and risk of exposure) and whether it trains employees on proper hand washing practice and other preventative measures established by the

Center for Disease Control. The section is broken down into two parts. The first part addresses how McDonald's has trained employees on social distancing specifically. The second part addresses other training procedures.

This prong encompasses social distancing, as that is a new measure that has been established as a preventative measure. 6/15/2020 Hr'g Tr. 96 (W. Garrett). McDonald's defines social distancing as:

[K]eeping space between yourself and other people outside of your home. To practice social distancing:

- Stay at least 6 feet from other people*
- Do not gather in groups
- Stay out of crowded places and avoid mass gatherings

In addition to everyday steps to prevent COVID-19, keeping space between you and others, even if you do not feel sick or the other person does not appear sick, is one of the best tools we have to avoid being exposed to a virus and slowing its spread locally.

***Please note that individuals may be closer to each other than 6 feet, and pass each other momentarily, as long as it's not for a period of 10 cumulative minutes or more.**

McDonald's Ex. 34 (emphasis added). Additionally, McDonald's has provided manager talking points that define social distancing. McDonald's Ex. 24. This sheet states that social distancing "means keeping space between yourself and other people. You should stay at least 6 feet from other people, do not gather in groups, and stay out of crowded places...**We know that you may be closer to another person as you pass one another. As long as it's not for a period of 10 cumulative minutes or more, it is okay pursuant to the CDC guidance.**" McDonald's Ex. 24 at 5 (emphasis added). Sladin testified that employees have been trained on social distancing, and that Turner has signed a social distancing roster. 6/16/2020 PM Hr'g Tr. 14 (S. Sladin). When asked what social distancing is, Sladin gave the same definition as provided in the McDonald's Exhibits. 6/16/2020 PM Hr'g Tr. 9 (S. Sladin); McDonald's Ex. 34; McDonald's Ex. 24.

McDonald's has also put up signs telling people to "allow space" but those signs do not specify that there should be a 6 foot distance between people. McDonald's Ex. 27.

Neither the the Governor's Executive Order nor the IDPH guidelines include this 10 minute addendum to the social distancing definition that McDonald's has included.² See McDonald's Exs. 53, 62. Further, the Plaintiffs provided photographic evidence of employees and managers standing within 6 feet of each other without properly wearing masks. Pl. Ex. 25. Therefore, this Court finds that McDonald's is not properly training its employees on social distancing or training them in a way that is consistent with the Governor's Executive Order.

As for other types of training and information McDonald's provides, Turner testified that he has never been trained on any preventative measures either individually or in a group. 6/10/2020 Hr'g Tr. 100:9-16 (T. Turner). Sladin testified employees were trained on the proper way to wear masks. 6/16/2020 PM Hr'g Tr. 27:5-14 (S. Sladin) Defendant introduced into evidence information about COVID-19 that was available to employees while at work. See DAK4 Ex. 6 (pictures of informational sheets at time clock). Additionally, Knox testified that she reminds employees "to wash their hands every 30 minutes to an hour." 6/16/2020 PM Hr'g Tr. 98:9-12 (J. Knox). The evidence Defendants have provided establishes that, with the exception of social distancing, they are providing accurate information about COVID-19 and that they are working to train employees on preventative measures; therefore, the way Defendants are training and informing employees on COVID-19 related procedures, besides social distancing, are not currently creating an environment that would substantially or unreasonably interfere with Plaintiffs' or the public's health.

² As Dr. Lang's testimony explains, this 10 minute rule applies to the close contact definition for purposes of notification of exposure but is not social distancing. 6/16/2020 PM Hr'g Tr. 148 (W. Lang).

Finally, the Court must determine whether the way the McDonald's at 10320 South Kedzie Avenue is (or is not) enforcing policies requiring employees to wear face coverings during their shifts and requiring customers entering a store to wear face coverings. Over the course of the pandemic the Illinois Governor has issued a series of Executive Orders as information about the virus progresses. The current Executive Order states that all businesses must "ensure that employees...wear face coverings when social distancing is not always possible." McDonald's Ex. 62, E.O. 2020-38 §3(a). The Executive Order also "encourage[s] visitors to wear face coverings." McDonald's Ex. 62, E.O. 2020-38 §3(a). Dr. Lang testified that this Executive Order is in line with best practices in the United States. 6/16/2020 PM Hr'g Tr. 122:21, 123:9 (W. Lang).

Regarding McDonald's policy, Garrett testified that McDonald's had a policy requiring face coverings once McDonald's was able to provide them, generally this happened in April 2020. 6/15/2020 Hr'g Tr. 156 (W. Garrett); McDonald's Ex. 30. Garrett testified that the McDonald's policy states that "subject to applicable legal requirements, any employees who refuses to wear a face-covering will be sent home without pay." 6/15/2020 Hr'g Tr. 107:12-15 (W. Garrett); McDonald's Ex. 30. All guidance created by McDonald's was disseminated to all franchise stores. 6/15/2020 Hr'g Tr. 99 (W. Garrett). Franchise restaurants are also required to follow this mask policy. 6/15/2020 Hr'g Tr. 166:22-24, 167:1-22 (W. Garrett). In regards to the customers' use of masks, while there may have been prior issues, McDonald's has cured the defects and an injunction is not required. McDonald's is currently requiring masks to be worn prior to entry to the building and they have also encouraged mask wearing by installing signs at the drive-thru. They also have an additional mitigating factor for customer-to-employee contact as they have installed plexiglass at the counter and at the drive-thru. McDonald's Ex. 2, at 15;

McDonald's Ex. 60, at 1; McDonald's Ex. 75, at 3; McDonald's Ex. 76, at 2-3. There is no sign in place for curbside pickup, but Defendant's expert testified that COVID-19 is much less likely to transmit when outside. 6/16/2020 PM Hr'g Tr. 133-134, 188-189 (W. Lang).

Defendants make clear that they have a mask policy in place for employees. McDonald's Ex. 30. However, Turner's credible testimony raises questions of whether employees and managers follow through on enforcing the policy. Turner testified that he works the night shift but he arrives at work 30 minutes before the lobby closes and he has never seen a customer turned away because they were not wearing a mask. 6/10/2020 Hr'g Tr. 98:11-13, 18-21 (T. Turner). Turner testified, specifically:

Q. Do any of the managers you work with not wear the mask properly?

A. Yes.

Q. Okay. Who are the managers who you've seen not wearing a mask properly?

A. Curtis (phonetic).

Q. Okay. Anyone else who's name you know?

A. Janitha be sometimes, you know, but majority of the time I see her with one on. But Curtis --

Q. Okay. And how many employees on your shift do you see regularly not wearing the masks properly -- not wearing it properly?

A. Like three. Two or three.

Q. Okay. And all of these things are happening or have been happening regularly through the time you have been on the night shift, is that right?

A. Yes, sir.

6/10/2020 Hr'g Tr. 97:13-24, 98:1-5 (T. Turner). Further, Plaintiffs submitted photographic evidence of workers and managers working without wearing their mask properly while within 6 feet of each other. Pl. Ex. 25. Sladin also credibly testified that there are constant struggles with mask enforcement at the South Kedzie location. 6/16/2020 PM Hr'g Tr. 14:8-11 (S. Sladin).

McDonald's took many available measures to mitigate COVID-19 including putting up plexiglass in the drive-thru and at the counter, providing personal protective equipment ("PPE"), taking employee temperatures, doing wellness checks and putting up signs. Even throughout the

hearing, if McDonald's learned of a deficiency, they moved to correct it.³ However, the evidence shows there are still two serious failures. The first is the incorrect social distancing training with the 10 minute addendum and the second is the failure to enforce the mask wearing policy.

Although neither in and of themselves necessarily create a substantial or unreasonable interference with the public's or the Plaintiffs' rights, the combination certainly does as it results in the failure of employees to either remain 6 feet apart or wear a mask. The Defendants' expert, Dr. Lang, testified that safety measures require a layered process. If you cannot social distance, you must wear a mask. It is the mask that provides the mitigation when social distancing is not possible. 6/16/2020 PM Hr'g Tr. 139 (W. Lang). Dr. Lang also stated COVID-19 cases would increase if we don't social distance correctly. 6/16/2020 PM Hr'g Tr. 200 (W. Lang). Plaintiffs' expert, Dr. Orris, testified that staying 6 feet away significantly reduces the viral exposure to other workers and when combined with a mask reduces the transmission of the virus among the workforce. 6/10/2020 Hr'g Tr. 145 (P. Orris). Further, short repeated exposures can result in transmission. 6/10/2020 Hr'g Tr. 146 (P. Orris).

This potentially hazardous combination contradicts the Governor's Executive Order and Illinois public safety guidelines on social distancing which require people to maintain a 6 foot distance from each other or wear a mask.⁴ McDonald's has created an environment that leads employees, including managers, to believe they can take off their masks and stand within 6 feet of each other as long as they do not do so in excess of 10 minutes. Pl. Ex. 25. This increases the health risk for the employees, their families and the public as a whole and conflicts with the

³ This McDonald's location even put up signs on the drive-thrus to encourage mask wearing after this preliminary injunction hearing had begun. DAK4 Ex. 4; 6/16/2020 PM Hr'g Tr. 68-69 (S. Sladin).

⁴ Dr. Lang testified that the Governor's Order is consistent with best practices in relation to masks and social distancing. 6/16/2020 PM Hr'g Tr. 128:5-9 (W. Lang).

Governor's Order on social distancing potentially undoing any good it has done as we fight this incredibly contagious disease.

McDonald's Located at 2438 West Cermak Road (Defendants McDonalds, McDonald's USA, and Restaurant).

Plaintiffs presented one witness, Maria Villasenor ("Villasenor"), to speak specifically about the McDonald's located at 2438 West Cermak Road, owned by Defendant McDonald's Restaurants of Illinois. Additionally, Plaintiffs presented one expert witness, Dr. Peter Orris ("Dr. Orris"). In response, Defendants presented one witness, Olivia Salas ("Salas"). Additionally, Defendants presented two witnesses who spoke to the case as a whole: William Garrett ("Garrett")-Senior Vice President of McDonald's- and an expert witness Dr. William Lang ("Dr. Lang").

First, this Court analyzes whether the way the McDonald's at 2438 West Cermak Road currently supplies masks and gloves is causing substantial and unreasonable interference. 6/4/2020 Hr'g Tr. 30:1-3 (M. Villasenor). Villasenor testified that managers are currently providing masks. 6/4/2020 Hr'g Tr. 29 (M. Villasenor). Villasenor admitted that she signed a document which stated that the store was now providing proper PPE, including masks and hand sanitizer. 6/4/2020 Hr'g Tr. 87:6-11 (M. Villasenor). Further, the manager, Salas, testified that gloves and masks were available to employees. 6/16/2020 AM Hr'g Tr. 116 (O. Salas). While it may have been an issue in the past, Plaintiffs have not shown that there is a lack of masks or gloves now. Therefore, Defendants are not currently creating an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health on this issue.

Second, we look to see whether the current amount of hand sanitizer in the 2438 West Cermak Road store causes a substantial and unreasonable interference with Plaintiffs or public health. Villasenor testified that while there are hand sanitizer dispensers they are not always fully

stocked. 6/4/2020 Hr'g Tr. 52:23-24, 53:1-2 Hr'g Tr. 54-56 (Villasenor). On cross-examination, Villasenor admitted that McDonald's was providing the necessary PPE, including hand sanitizer. See 6/4/2020 Hr'g Tr. 87:6-11 (M. Villasenor). Defendants introduced evidence that the Cermak store had sanitizer stations in the store as early as February 2020. See McDonald's Ex. 22. Further, Salas testified that there is "enough hand sanitizer to fill the dispensers when they run out" and that the store has not recently run out of hand sanitizer. 6/16/2020 AM Hr'g Tr. 126 (O. Salas). Further hand washing was available which helps mitigate this issue. 6/4/2020 Hr'g Tr. 106 (M. Villasenor); McDonald's Ex. 35. Plaintiffs have not shown that the hand sanitizer provided currently creates an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

The third analysis is whether the way 2438 West Cermak Road monitors infections among workers and how the store informs workers about a positive COVID-19 test causes substantial and unreasonable interference. Salas testified that temperature checks of all employees are conducted at the beginning of every shift and if an employee's temperature is higher than 99.5 they are sent home. 6/16/2020 AM Hr'g Tr. 98-100 (O. Salas). In fact, the thermometer that is used even has a sign on it that says "99.5 bad, call Olivia [Salas]." 6/16/2020 AM Hr'g Tr. 101 (O. Salas); McDonald's Ex. 23. Villasenor testified that before she clocks into work her temperature is taken and she completes a wellness check. 6/4/2020 Hr'g Tr. 123:1-13 (M. Villasenor). On the issue of temperature checks, the evidence weighs in favor of the Defendants.

Villasenor testified that there have been workers who have tested positive for COVID-19 at her store. 6/4/2020 Hr'g Tr. 65 (M. Villasenor). Villasenor testified that managers informed her that a coworker tested positive, but did not tell her who the coworker was. 6/4/2020 Hr'g Tr.

65:13-18 (M. Villasenor). Villasenor then testified about the procedure that was followed after she was informed about a coworker testing positive for COVID-19:

Q. And what happened after she -- did Olivia say that [your coworker tested positive] to you alone or did she tell other employees, if you know?

A. She had already told my coworkers about this, but I was in another area of the store, from the fryer, and she said come here with me, and I went with her and she told me, oh, someone tested positive, and we are now going to clean and close the store, and she had already closed the store.

Q. So what happened after that?

A. She asked us to each clean an area.

Q. Okay. And did you do that?

A. Yes.

Q. How long did it take to do that cleaning?

A. About an hour and a half.

6/4/2020 Hr'g Tr. 66:21-24, 67:1-8 (M. Villasenor). Salas' testimony coincides with Villasenor's. See 6/16/2020 AM Hr'g Tr. 108-10 (O. Salas). Salas further elaborates that she did not tell Villasenor the name or gender of the employee who tested positive in order to protect that individual's privacy. 6/16/2020 AM Hr'g Tr. 108:19-23 (O. Salas). Salas testified that she was responsible for telling any worker if they had come into close contact with a COVID-19 positive employee; however, after a video review, Salas learned that no one came in close contact with that employee. 6/16/2020 AM Hr'g Tr. 109 (O. Salas). The evidence does not support Plaintiffs' claim that the way Defendants monitor and inform Plaintiffs of COVID-19 positive cases currently create an environment that substantially and unreasonably interferes with the public's or the Plaintiffs' health.

The next issue the court must address is whether 2438 West Cermak Road is providing accurate information about COVID-19 (how it spreads, and risk of exposure) and whether it trains employees on proper hand washing practice, social distancing and other preventative measures established by the Center for Disease Control. Salas testified that she has been trained and is training employees based on McDonald's policy. 6/16/2020 AM Hr'g Tr. 113 (O. Salas)

(discussing McDonald's Ex. 30, quoted at length above). As discussed above, this Court finds that McDonald's training on social distancing is incorrect as it is not consistent with the Governor's Executive Order.

Regarding other training, Villasenor testified that she did not receive training on anything regarding COVID-19. See 6/4/2020 Hr'g Tr. 68-70 (M. Villasenor). Additionally, she testified that the store did not have the signs up in mid-May. 6/4/2020 Hr'g Tr. 102 (M. Villasenor). However, she admitted on cross-examination that now there are signs hanging in the store. 6/4/2020 Hr'g Tr. 104:9-13 (M. Villasenor) Additionally, on cross-examination Villasenor admitted that she certified that she read the wellness check sign but she did not actually read it. 6/4/2020 Hr'g Tr. 125:12-14 (M. Villasenor). Further, Villasenor admits that she has seen signs regarding wearing gloves, and that there is one posted on the wall by the front counter. 6/4/2020 Hr'g Tr. 105:13-20 (M. Villasenor). Defendants have submitted a number of pictures into evidence which demonstrate that there was COVID-19 related signage readily available at the store. See e.g. McDonald's Ex. 23. The evidence shows that, other than social distancing, defendants have provided accurate information about COVID-19 and that they are working to train employees on preventative measures. Therefore, the way Defendants are training and informing employees on COVID-19 related procedures, besides social distancing, are not currently creating an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

Finally, the Court must determine whether the way the McDonald's at 2438 West Cermak Road is (or is not) enforcing policies requiring employees to wear face coverings during their shifts and requiring customers entering a store to wear face coverings. First, in regards to the customers' use of masks, while there may have been prior issues, McDonald's has cured the

defects and an injunction is not required. McDonald's is currently requiring masks to be worn prior to entry to the building and they have also encouraged mask wearing by installing signs at the drive-thru. They also have an additional mitigating factor for customer-to-employee contact as they have installed plexiglass at the counter and at the drive-thru. McDonald's Ex. 2, at 15; McDonald's Ex. 60, at 1; McDonald's Ex. 75, at 3; McDonald's Ex. 76, at 2-3. There is no sign in place for curbside pickup, but Defendant's expert testified that COVID-19 is much less likely to transmit when outside. 6/16/2020 PM Hr'g Tr. 133-134, 188-189 (W. Lang).

Next, Villasenor testified that she "frequently" saw her coworkers and managers wearing their masks below their nose and chin. See 6/4/2020 Hr'g Tr. 32-44 (M. Villasenor). Additionally, Villasenor testified that she was "about a step away" from one of her managers who was improperly wearing the mask. 6/4/2020 Hr'g Tr. 35:4 (M. Villasenor). Salas corroborated Villasenor's testimony that there were frequent issues with masks. Salas testified that she has seen employees not wearing their masks properly because they slide down their face. Salas opines that the employees are "trying their best." 6/16/2020 AM Hr'g Tr. 89-90 (O. Salas).

However, "trying your best" in a pandemic can still cause substantial interference with the public health in a pandemic, especially when employees are not expected to remain 6 feet apart for periods of less than ten minutes. Defendants' inability to ensure that employees are appropriately covering their face when not 6 feet apart is unreasonable given the magnitude of the potential consequences.

McDonald's Located at 3867 South Archer Avenue (Defendants McDonalds, McDonald's USA, and Restaurant).

Plaintiffs presented one witness, Sujey Figueroa ("Figueroa"), to speak specifically about the McDonald's located at 3867 South Archer Avenue, owned by Defendant McDonald's Restaurants of Illinois. Additionally, Plaintiffs presented one expert witness, Dr. Peter Orris

(“Dr. Orris”). In response, Defendants presented one witness, General Manager Aurora Huerta (“Huerta”). Additionally, Defendants presented two witnesses who spoke to the case as a whole: William Garrett (“Garrett”)-Senior Vice President of McDonald’s- and an expert witness Dr. William Lang (“Dr. Lang”).

First, this Court analyzes whether the way the McDonald’s at 3867 South Archer Avenue currently supplies masks and gloves is causing substantial and unreasonable interference with Plaintiffs’ rights. Figueroa testifies that the masks she was given by McDonald’s were thin and “did not provide any protection.” 6/10/2020 Hr’g Tr. 63:7-10 (S. Figueroa). In response, General Manager Huerta testified that at first employees were provided with cloth masks but then the stores were provided with disposable masks which are now given out daily to employees and throughout their shift if need be. 6/15/2020 Hr’g Tr. 202-03 (A. Huerta). Regarding gloves, Huerta testified that there are enough gloves for all employees, the gloves come in different sizes to accommodate different hand sizes, and that employees are required to periodically change their gloves. 6/15/2020 Hr’g Tr. 199 (A. Huerta). Plaintiffs have not shown that the lack of masks or gloves are currently creating a substantial or unreasonable interference with the public or the Plaintiffs’ rights. The concern about the original cloth masks being thin has since been remedied through the supply of daily masks that can be replaced as necessary. Therefore, Plaintiffs have not shown that the gloves and masks being provided are currently creating an environment that would substantially or unreasonably interfere with Plaintiffs or the public’s health.

Second, we look to see whether the current amount of hand sanitizer in the 3867 South Archer Avenue store causes a substantial and unreasonable interference with Plaintiffs’ public health. Figueroa testified that the hand sanitizer stations had been completely empty and that her

co-workers would not wash their hands regularly. 6/10/2020 Hr'g Tr. 14-15 (S. Figueroa). On cross-examination, Figueroa testified that there are multiple hand sanitizer stations in place as of May 25, 2020. 6/10/2020 Hr'g Tr. 54:13-16 (S. Figueroa) Further, on cross-examination, Figueroa testified that McDonald's policy encourages hand-washing as a way to achieve the same, or better results, as hand sanitizer. 6/10/2020 Hr'g Tr. 57-58 (S. Figueroa) Huerta testified that hand sanitizer is available and there are about five hand sanitizer stations throughout the store. 6/15/2020 Hr'g Tr. 220-21 (A. Huerta). Huerta testified that she is in charge of ordering hand sanitizer and that the restaurant has not recently run out of hand sanitizer. 6/15/2020 Hr'g Tr. 220-21 (A. Huerta). Since McDonald's recommends hand-washing and because hand-sanitizer stations are available at the store, Plaintiffs have not shown that the hand sanitizer provided currently creates an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

The third analysis is whether the way 3867 South Archer Avenue monitors infections among workers and how the store informs workers about a positive COVID-19 test causes substantial and unreasonable interference with the public or Plaintiffs' rights. One of the practices McDonald's has put into place to monitor COVID-19 is to take employees temperatures before beginning work. 6/15/2020 Hr'g Tr. 134 (W. Garrett). Figueroa testified the temperature is supposed to be taken at the front of the store before the employee begins work, but instead the temperature was being taken in the back office. 6/10/2020 Hr'g Tr. 27-28 (S. Figueroa). Huerta testified that she conducts the wellness checks before employees start work and takes the temperatures of employees 6/15/2020 Hr'g Tr. 223-25 (A. Huerta). Dr. Lang, Defendants' expert witness, testified that if an individual is COVID-19 positive other symptoms typically show before a high temperature, thus the employees would have had other symptoms

before running a high temperature, thus insinuating that a temperature check is more a last line of defense than an important first check. 6/16/2020 PM Hr'g Tr. 141:18-20 (W. Lang) (“So typically the best practice would be that you use temperature checks as a backup practice for symptom checking.”). However, other symptoms are checked during the wellness check. Therefore, even if temperatures are not being properly taken, Dr. Lang’s testimony indicates that this violation of store policy does not create an environment that substantially or unreasonably interferes with the Plaintiffs’ or the public’s health.

Huerta testified that three employees at her store have tested positive for COVID-19. 6/15/2020 Hr'g Tr. 226 (A. Huerta). Huerta testified that the procedure at the store when there is news of a COVID-19 positive test is to deep clean the store, notify every employee, and to inform individuals who have worked in close proximity of the COVID-19 positive individual that they were working close contact with that person. 6/15/2020 Hr'g Tr. 226-27 (A. Huerta). Therefore, the Plaintiffs have not shown that the way Defendants monitor and inform Plaintiffs of COVID-19 positive cases create an environment that substantially and unreasonably interferes with the public’s or Plaintiffs’ health.

Next, the Court asks whether 3867 South Archer Avenue is providing accurate information about COVID-19 (how it spreads, and risk of exposure) and whether it trains employees on proper hand washing, social distancing and other preventative measures established by the Center for Disease Control.

Once again, McDonald’s social distance training is not in compliance with the Governor’s Order, nor has the Court been made aware of any CDC guidance that supports McDonald’s 10 minute exception to social distancing protocol. Huerta testified that she has been trained using the document (McDonald’s Exhibit 30), by using the definition which includes the

added 10 minute allowed time, and, moreover, that she has trained her staff based on that document. 6/15/2020 Hr’g Tr. 113:18-24, 114:1-4 (A. Huerta)(“Q First of all, do you share this document with your crew? A. Yes. Q When you do, do you walk through the operation changes at the restaurant? A. Yes. Q Have you done that with your crew in this case? A Yes. Q Is there a Spanish version of this document? A. Yes.”). Therefore as discussed above McDonald’s social distance training is incorrect as it is not consistent with the Governor’s Executive Order.

Regarding other preventative training, Figueroa testified that she was not trained or instructed on how to wear gloves properly or any other matter related to COVID-19. 6/10/2020 Hr’g Tr. 52 (S. Figueroa). However, on cross-examination, Figueroa admits to seeing some training material but not reading them and to seeing posters in the break room after May 25, 2020. 6/10/2020 Hr’g Tr. 53:24, 54:1-3, 56 (S. Figueroa).

Figueroa testified that while she was at work on June 5, 2020, two people, whom she believed were from McDonald’s corporate, visited the store. While they were at the store the managers began to instruct the employees on the proper way to wash hands and wear masks. After they left, the managers at the store asked Figueroa to read and sign “instructions about COVID-19.” See 6/10/2020 Hr’g Tr. 34-40 (S. Figueroa). Figueroa testified that on June 6, 2020 her manager asked her to sign another similar document related to COVID-19 but testified that she was not allowed to read it. 6/10/2020 Hr’g Tr. 41 (S. Figueroa).

On cross-examination, Figueroa admits that there are signs in the store showing how to properly wear a mask that were up as of May 25, 2020. 6/10/2020 Hr’g Tr. 45:15-20, 46 (S. Figueroa). Similarly, Figueroa admitted that there are signs on the front door of the store informing customers that they must wear a mask (*Id.* at 46); informing workers to wear gloves (*Id.* at 52); and informing employees to wash their hands and change their gloves (*Id.* at 52-53).

Additionally, Figueroa testified that there is a wellness checklist that she must certify before beginning work. 6/10/2020 Hr'g Tr. 70-72, 76:6-8 (S. Figueroa) Ultimately Figueroa's testimony leads the Court to believe that training material is around the store, she is just not engaging with it.

Huerta testified she trained Figueroa, and others, on other practices related to COVID-19. 6/15/2020 Hr'g Tr. 190-91 (A. Huerta). Additionally, Huerta testified that she personally trains employees on how to properly wear a mask. 6/15/2020 Hr'g Tr. 205 (A. Huerta). The evidence Defendants have provided establishes that, other than social distancing, they are providing accurate information about COVID-19 and that they are working to train employees on preventative measures. Therefore, the way Defendants are training and informing employees on COVID-19 related procedures, besides social distancing, are not currently creating an environment that would substantially or unreasonably interfere with Plaintiffs or the public's health.

Finally, the Court must determine whether the way the McDonald's at 3867 South Archer Avenue is (or is not) enforcing policies requiring employees to wear face coverings during their shifts and requiring customers entering a store to wear face coverings is creating substantial and unreasonable interference. In regards to the customers' use of masks, while there may have been prior issues, McDonald's has cured the defects and an injunction is not required. McDonald's is currently requiring masks to be worn prior to entry to the building and they have also encouraged mask wearing by installing signs at the drive-thru. They also have an additional mitigating factor for customer-to-employee contact as they have installed plexiglass at the counter and at the drive-thru. McDonald's Ex. 2, at 15; McDonald's Ex. 60, at 1; McDonald's Ex. 75, at 3; McDonald's Ex. 76, at 2-3. There is no sign in place for curbside pickup, but Defendant's expert

testified that COVID-19 is much less likely to transmit when outside. 6/16/2020 PM Hr’g Tr. 133-134, 188-189 (W. Lang).

Figueroa testified that employees and managers were currently not wearing their masks appropriately; nor was there enforcement of the mask policy. 6/10/2020 Hr’g Tr. 12-14 (S. Figueroa). Figueroa testified that on recent shifts (May 25, May 30, and June 6, 2020) coworkers and managers were still not wearing their masks properly. 6/10/2020 Hr’g Tr. 19:18-20 (S. Figueroa) (“Okay. And was everybody wearing their masks properly? A. There were some people that were not.”); see 6/10/2020 Hr’g Tr. 24-26 (S. Figueroa). Huerta testifies that she sees employees not wearing their masks properly and has to continuously remind them to wear the mask properly. 6/15/2020 Hr’g Tr. 210-13 (A. Huerta).

Huerta further testified that even though employees have been trained on social distancing there are still times when employees are within 6 feet of one another, and the solution McDonald’s has provided is “continuous coaching.” 6/15/2020 Hr’g Tr. 196:5-17 (A. Huerta) (“We've got to keep coaching on social distancing because there is times where people tend to, you know, whether they're trying to support each other or what they'll, you know, get closer. So, again, we've got to remind them just like remind them about a lot of other things. So it's just continuous coaching, training, communicating, and reiterating.”). However continuous coaching on incorrect training is just reinforcing the incorrect behavior. Therefore, while Defendants have made efforts to enforce their policy the reality is that the current procedures Defendants are using are not working. As a result, Plaintiffs right to work free from exposure to a highly contagious and deadly disease is being substantially and unreasonably interfered with. While Plaintiffs themselves have not tested positive for COVID-19, other employees have.

It is important to note for all three of these restaurants that Defendants' policies, in theory, are not unreasonable, rather, as stated above, it is how they are failing to be properly implemented. Plaintiffs' expert, Dr. Orris, testified that staying 6 feet away significantly reduces the viral exposure to other workers and when combined with a mask reduces the transmission of the virus among the workforce. 6/10/2020 Hr'g Tr. 145 (P. Orris). Further, short repeated exposures can result in transmission. 6/10/2020 Hr'g Tr. 146 (P. Orris).

This potentially hazardous combination contradicts the Governor's Executive Order and Illinois public safety guidelines on social distancing which require people to maintain a 6 foot distance from each other or wear a mask.⁵ The current McDonald's environment leads employees, including managers, to believe they can take off their masks and stand within 6 feet of each other as long as they do not do so in excess of 10 minutes. Pl. Ex. 25. This increases the health risk for the employees, their families, and the public as a whole and conflicts with the Governor's Executive Order.

As a result, Plaintiffs have shown a likelihood of success on the merits of their public nuisance claim.

Negligence

In order to succeed on a negligence claim, a Plaintiff must show: (1) the Defendant owed a duty to the Plaintiff; (2) the duty was then breached; (3) Defendants actions were the actual and proximate cause of the Plaintiffs' injury; and (4) injury. *Simpkins v. CSX Transp., Inc.*, 2012 IL 1106622, ¶14. In this case Defendants McDonald's Corporation and McDonald's USA do not owe any duty of care to the employee Plaintiffs because they do not own any of the stores. See *Gress v. Lakhani Hospitality Inc.*, 2018 IL App (1st) 170380, ¶44. While McDonald's

⁵Dr. Lang testified that the Governor's Order is consistent with best practices in relation to masks and social distancing. 6/16/2020 PM Hr'g Tr. 128:5-9 (W. Lang).

Corporation and McDonald's USA took steps to promulgate guidance to franchisees during the COVID-19 pandemic, these steps are not likely to create a duty of care. *Elam v. O'Connor & Nakos, Ltd.*, 2019 IL App (1st) 181123, ¶48. Defendants McDonald's Restaurants of Illinois and DAK4 owe a duty of care to their employees.

However, Plaintiffs' injuries are, at this point, speculative. In Plaintiffs' public nuisance claim there is case law which directly supports prospective injunctive relief in instances of public nuisances. See *Wilsonville v. SCA Services*, 86 Ill. 2d 1 (1981). However, there is no special consideration for this type of relief for a negligence claim. Therefore, common law injunction principles apply. Illinois law holds that: "the requirement of the showing of imminent injury is not satisfied by proof of a speculative possibility of injury and such relief will not be granted to allay unfounded fears or misapprehensions." *Smith v. Dep't of Nat. Res.*, 2015 IL App (5th) 140583, ¶27 (quoting *Smith Oil Corp. v. Viking Chemical Co.*, 127 Ill. App. 3d 423, 431 (2nd Dist. 1984)). As there is no evidence that any of the Plaintiffs have been directly exposed to or infected by COVID-19, this claim is not likely to succeed on the merits because the causation and injury are purely speculative.

Clear Right in Need of Protection

"In order to show a clear and ascertainable right, [a] plaintiff [is] required to allege injury to some substantive interest recognized by statute or common law." *Kilhafner v. Harshbarger*, 245 Ill.App.3d 227, 229 (3rd Dist. 1993). A well-pleaded complaint for injunctive relief must contain on its face a clear right to relief and allege facts which establish the right to such relief in a positive, certain, and precise manner. *Nameoki Tp. v. Cruse*, 155 Ill. App. 3d 889, 898 (5th Dist. 1987). Here, there is a right to be free from conduct that creates a public nuisance- a highly contagious and dangerous disease. See *Wilsonville v. SCA Services*, 86 Ill. 2d 1 (1981); *Heigert*

v. Riedel, 206 Ill. App. 3d 556, 562 (5th Dist. 1990) (the prevention and control of communicable diseases is a momentous task which is of the utmost importance to the health and welfare of our citizens.); see also Restatement (Second) of Torts § 821B, cmt. g (1979) (“the threat of communication of smallpox to a single person may be enough to constitute a public nuisance because of the possibility of an epidemic.”). Plaintiffs and the public have a right not to be unnecessarily endangered by COVID-19 and this is a clear right in need of protection.

Irreparable Injury and Inadequate Remedy at Law

The elements of irreparable injury and inadequate remedy at law are closely related. *Happy R. Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶36. An irreparable injury is one which cannot be adequately compensated in damages or be measured by any certain pecuniary standard. *Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass’n*, 173 Ill. App. 3d 431, 435 (2nd Dist. 1988). With respect to the element of an inadequate remedy at law, it is widely held that money damages constitute adequate compensation absent a showing that it would be impossible, rather than merely complicated, to ascertain the amount of damages. *Wilson v. Wilson*, 217 Ill. App. 3d 844, 856-59 (1st Dist. 1991).

Defendants rely on *Rural Community Workers Alliance v. Smithfield Foods* as a basis for finding that these two factors weigh in favor of Defendants. In that case, on April 23, Plaintiffs Jane Doe (“Doe”) and the Rural Community Workers Alliance (“RCWA”) filed suit against Defendants, Smithfield Foods, Inc. and Smithfield Fresh Meats Corp. (collectively, “Smithfield”), as a result of their response, or lack thereof, to the COVID-19 crisis. *Rural Community Workers Alliance v. Smithfield Foods*, No. 5:20-cv-06063 DGK, 2020 U.S. Dist. LEXIS 78793, at 1-2 (E.D. May 5, 2020). Plaintiffs sought declaratory judgment stating that: (1) Smithfield’s practices at the Plant constituted a public nuisance; and (2) Smithfield breached its

duty to provide a safe workplace. *Id.* at 3. Additionally, Plaintiffs also moved for a temporary restraining order and preliminary injunction, seeking to force Smithfield to provide PPE for its workers and ensure that social distancing practices were enforced. *Id.* Plaintiffs conceded that although Smithfield had implemented new procedures after the suit had been filed, they still had not taken the necessary precautions to protect its workers against COVID-19. *Id.* at 4. As a result, Plaintiffs revised their requested injunctive relief to direct Smithfield to make additional changes to its “production practices,” provide additional breaks to allow workers to care for their personal hygiene, and ensure that its policies do not require workers to come into work if they display COVID-19 related symptoms. *Id.*

The Missouri Court reasoned that Plaintiffs did not demonstrate a threat of irreparable harm. *Smithfield*, 2020 U.S. Dist. LEXIS 78793, at 8-9. The Court determined that it was impossible to determine whether Plaintiffs would suffer an actual, imminent threat, as no one’s health is guaranteed in the middle of a pandemic. *Id.* Moreover, the Court found that because Smithfield had already taken measures to minimize the risk that its workers would contract COVID-19, it could not be concluded that COVID-19 was inevitable and therefore, there was no immediate threat. *Id.*

However, *Smithfield* is not binding authority and Illinois allows for injunctive relief for a prospective nuisance. See *Wilsonville*, 86 Ill. 2d 1 (1981). Further it is difficult to imagine a harm more irreparable than serious illness or death caused by this highly contagious disease. The possibility of being infected by COVID-19 is an irreparable harm. As of June 17, 2020, the United States has had 2,132,321 cases and 116,862 deaths. Center for Disease Control (“CDC”), Coronavirus Disease 2019 (COVID-19), Cases in the U.S. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. Over 5,200

Illinoisans have died from this virus. McDonald's Ex. 62. Even though there is a possibility of full recovery from an infection the lasting ramifications are still largely unknown. Courts around the country have taken this reality and future uncertainty into consideration when weighing these factors. See *Malam v. Adducci*, No. 20-10829, 2020 U.S. Dist. LEXIS 59709, at *18 (E.D. Mich. Apr. 6, 2020); *Banks v. Booth*, No. 20-849, 2020 U.S. Dist. LEXIS 68287, *43 (D.D.C. April 19, 2020); *Thakker v. Doll*, No. 1:20-cv-480, 2020 U.S. Dist. LEXIS 59459, at *9 (M.D. Pa. Mar. 31, 2020). Therefore, this Court disagrees with the conclusion in *Smithfield* and finds that COVID-19 does present an immediate harm.

Likewise, this Court finds that the harm of being infected with COVID-19 is not something that a monetary award will remedy. Instead of being financially compensated for risking exposure, the Plaintiffs here simply want the ability to work in an environment where their health and safety is not put at risk. Pl. Mot. at 31. Therefore both of these elements are satisfied.

Balancing of Equities and Hardships

Lastly, a party must show that the benefits of granting the injunction outweigh the injury to the defendant. *Scheffel & Co., P.C. v. Fessler*, 356 Ill. App. 3d 308, 313 (5th Dist. 2005). Additionally, when the injunction implicates important public interests, the court should consider the effect such injunctive relief might have upon the public. *FOP, Chicago Lodge 7*, 2016 IL App (1st) 143884 at ¶28. The court should deny injunctive relief where it will cause serious harm to the public without a corresponding great advantage to the movant. *Id.*; *Douglas Theater Corp.*, 188 Ill. App. 3d 573, 579 (1st Dist. 1989).

In this case the Plaintiffs are asking the Defendants to enforce or edit their own policies, which are, in larger part, supported by the Illinois Governor's Orders as well as the Center for

Disease Control. Additionally, the policies McDonald's has are thought to be "best practice" by Defendants' expert witness, Dr. William Lang. See e.g. 6/16/2020 PM Hr'g Tr 123, 128, 134 (W. Lang). However, the evidence shows that while McDonald's has the right idea, it is not being put into practice exactly as McDonald's envisioned, thus endangering public health. The hardship McDonald's would suffer by strictly enforcing its mask policy and retraining employees on proper social distancing procedures is slight. Now, McDonald's may need to re- envision how it wants to implement the policy so as to ensure full compliance, but that is for McDonald's to decide. The potential risk of harm to these Plaintiffs and the community at large is severe. It may very well be a matter of life or death to individuals who come in contact with these restaurants or employees of these restaurants on a regular, or even semi-regular basis, during the COVID-19 pandemic. And while there are many individuals who believe the pandemic is no longer a threat, science and medical research indicate otherwise. There is a long road to recovery for all of us. The balance of equities therefore leans in favor of the injunction.

CONCLUSION

Therefore, this Court **GRANTS** Plaintiffs' Emergency Motion for Preliminary Injunction, in part, and **DENIES** Plaintiffs' Emergency Motion for Preliminary Injunction, in part. The Court finds:

- a. Defendants McDonald's Corporate and McDonald's USA cannot be enjoined because they do not own any of the McDonald's at issue here;
- b. Defendant Lexi will not be enjoined because it no longer owns the store at 35th Street;
- c. No injunction will be granted against the 35th Street store because there was no evidence presented against the current owner of the store;

- d. The evidence shows that Defendant McDonald's Restaurants of Illinois is:
 - i. Providing sufficient numbers of masks and gloves for employees;
 - ii. Providing sufficient hand sanitizers in their stores;
 - iii. Sufficiently monitoring COVID-19 cases among employees and informing employees;
- e. The evidence shows that Defendant McDonald's Restaurants of Illinois is not training employees about social distancing in a way that is consistent with the Governor's Executive order:
- f. The evidence shows that Defendant McDonald's Restaurants of Illinois is not enforcing the store's mask policy or complying with the Governors mask requirements;
- g. The evidence shows that Defendant DAK4 is:
 - i. Providing sufficient numbers of masks and gloves for employees;
 - ii. Providing sufficient hand sanitizers in their stores;
 - iii. Sufficiently monitoring COVID-19 cases among employees and informing employees;
- h. The evidence shows that Defendant DAK4 is not training employees about social distancing in a way that is consistent with the Governor's order;
- i. The evidence shows that Defendant DAK4 is not enforcing the store's mask policy;
- j. A negligence claim is not likely to succeed on the merits.

- k. Therefore it is ordered that Defendants McDonald's Restaurants of Illinois and DAK4 are enjoined from training employees on social distancing in a way that is inconsistent with the Governor's Executive Order.
- l. Further, Defendants McDonald's Restaurants of Illinois and DAK4 must enforce their mask wearing policies when employees are not 6 feet apart to come into compliance with the Governor's Order.
- m. This order is effective as of June 24, 2020 at 5 p.m. and will last until a decision is made on the merits or the Governor's Order changes its guidance on the facial coverings and/or social distancing.



6/24/2020

Dated

Judge Eve Reilly