

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Labor Commissioner's Office**  
 1500 Hughes Way, Suite C-202  
 Long Beach, CA 90810  
 Tel: (424) 450-2585 Fax: (562) 546-1359



**BEFORE THE LABOR COMMISSIONER STATE OF CALIFORNIA**

In the matter of Retaliation Citation Against:	CASE Numbers: RCI-CM-808459; RCI-CM-808461; RCI-CM-808450; RCI-CM-808467 Citation Nos.: RCI-580891; RCI-580950; RCI-580927; RCI-580924
R&B Sanchez, a California General Partnership between Robert E. Sanchez And Beverly A. Sanchez dba McDonald's; Robert E. Sanchez, an individual dba McDonald's or in the alternative Estate of Robert E. Sanchez; Beverly A. Sanchez, an individual dba McDonald's; Brian Sanchez, an individual dba McDonald's; and, DRS Hospitality LLC, a California Limited Liability Company, dba McDonald's, all jointly and severally liable	<b>Notice of Findings and Order</b>

You are notified that the findings were made by the Division of Labor Standards Enforcement on February 16, 2023. A copy of the findings is attached and served upon you by first class mail.

**ORDER – Based upon the findings attached hereto the Civil Penalty Citation/Assessment is:**

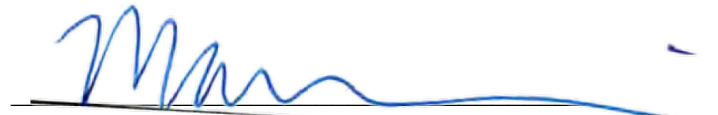
- Affirmed**
- Affirmed in part as set forth in the findings**
- Dismissed**

Pursuant to Labor Code section 98.74, subsection (d):

1. A person issued a citation pursuant to this section may obtain review of the written decision and order of the Labor Commissioner by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the Labor Commissioner's decision.
2. As a condition to filing a petition for a writ of mandate, the petitioner seeking the writ shall first post a bond with the Labor Commissioner equal to the total amount of any penalties, lost wages and interest thereon, liquidated damages, and any other monetary relief that are

due and owing as determined pursuant to subdivision (c). The bond shall be issued by a surety duly authorized to do business in this state and shall be issued in favor of the employee or employees who suffered the violation or violations.

3. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
4. If the bond is not filed pursuant to paragraph (2), or if no petition for writ of mandate is filed pursuant to paragraph (1), or if the petition is dismissed or withdrawn without entry of judgment, a certified copy of the written decision and order may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the total monetary amount shown on the certified order. The Labor Commissioner may also file a petition in superior court for judicial enforcement of any injunctive and other nonmonetary relief determined by the Labor Commissioner or their designee. After filing the petition, the Labor Commissioner may file an application for an order to show cause and serve it upon the respondent. Within 60 days of the date the Labor Commissioner filed the order to show cause, the court shall hold a hearing and, absent a showing of an abuse of discretion, shall issue an order for the injunctive and other nonmonetary relief.
5. If the employer fails to pay the amount of penalties, lost wages and interest thereon, and liquidated damages owed within 10 days of the entry of judgment, dismissal, or withdrawal of writ, or the execution of a settlement agreement, a portion of the undertaking, described in paragraph (2), equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, shall be forfeited to the Labor Commissioner for appropriate distribution.



**Max Norris**  
**Hearing Officer**

Dated: February 16, 2023

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3 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
4 **DIVISION OF LABOR STANDARDS ENFORCEMENT**

5 Before the Labor Commissioner of the State of California  
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10 In The Matter of Retaliation Citation Appeals:

Case No. RCI-CM-808459; RCI-CM-808461;  
RCI-CM-808450; RCI-CM-808467

11 R&B Sanchez, a California General  
12 Partnership between Robert E. Sanchez  
13 And Beverly A. Sanchez dba McDonald's;  
14 Robert E. Sanchez, an individual dba  
15 McDonald's or in the alternative Estate of  
16 Robert E. Sanchez; Beverly A. Sanchez, an  
17 individual dba McDonald's; Brian  
18 Sanchez, an individual dba McDonald's; and,  
19 DRS Hospitality LLC, a California Limited  
20 Liability Company, dba McDonald's,  
21 all jointly and severally liable.,

**FINDINGS AND ORDER ON  
CITATION NOS.: RCI-580891;  
RCI-580950; RCI-580927 AND  
RCI-580924**

22 **APPELLANTS.**

23 This matter arose as an appeal of retaliation citations issued by the California Labor  
24 Commissioner to: R&B Sanchez, Inc., a dissolved California corporation dba McDonald's; R&B  
25 Sanchez, form unknown dba McDonald's; Robert E. Sanchez, an individual dba McDonald's;  
26 Beverly A. Sanchez, an individual dba McDonald's; and Brian Sanchez, an individual dba  
27 McDonald's (collectively referred to as the "Appellants") pursuant to Labor Code section 98.74  
28 for alleged violations of Labor Code sections 98.6. A hearing was held on January 27, 2022,  
February 2, 2022, February 3, 2022, and February 4, 2022 per Labor Code section 98.74 via  
Zoom teleconferencing before the undersigned Hearing Officer. The case was submitted on April  
18, 2022, after the filing of closing briefs by the parties.

1 Appearances for Appellants:

2 Clinton Robison, Attorney for Appellants

3 Angelina Allen-Rothwell, Paralegal for Appellants

4 Dean Sanchez, Corporate Representative

5 Brian Sanchez, Corporate Representative, Human Resources Manager and Witness

6 Yesenia Duran, Witness, Store Manager at Marengo McDonalds

7 Appearances for Respondent Labor Commissioner:

8 Cristina Pena Vasquez, Attorney for the Labor Commissioner

9 David Bell, Attorney for the Labor Commissioner

10 Juana Escalante, Deputy Labor Commissioner, Agency Representative

11 Lizzet Aguilar, Complainant

12 Guadalupe Rolon, Complainant

13 Rocio Avila, Complainant

14 Salomon Sanchez, Complainant

15 Arnold Peña Perez, Organizer with “Fight for \$15”, Witness

16 **I. INTRODUCTION**

17 Appellants own and operate a McDonald’s franchise, known to the parties as the Marengo  
18 McDonalds, located at 1716 Marengo Street in Los Angeles, CA 90033 (“Marengo McDonalds”).  
19 Complainants allege that they were retaliated against by Appellants due to first complaining about  
20 health and safety conditions in various manners, and then going out on health and safety strikes,  
21 refusing to work in unsafe conditions. These health and safety complaints included complaints to  
22 management, complaints to government agencies, and holding health and safety related car  
23 caravan protests at the Marengo McDonalds on at least five (5) occasions. Appellants assert  
24 defenses of National Labor Relations Act preemption and a denial of illegal retaliation based  
25 upon an alleged business reason for terminating Complainants, job abandonment.

26 Complainants Lizzet Aguilar, Guadalupe Rolon, Salomon Sanchez and Rocio Avila filed  
27 complaints of retaliation with the Labor Commissioner’s Office alleging Appellants retaliated  
28 against them for exercising state rights relating to health and safety in their workplace. After an

1 investigation, Deputy Juana Escalante issued the four (4) Retaliation Citations per Labor Code  
2 section 98.74 for violations of Labor Code section 98.6 that are the subject of this appeal,  
3 Retaliation Citation Nos. 580891, 580927, 580924 and 580950. All evidence presented at hearing  
4 and/or submitted to the hearing officer was taken under submission, the parties submitted post-  
5 hearing briefs and the undersigned hearing officer now makes the following findings and order:

## 6 **II. THE CITATIONS AND ALLEGATIONS**

7 On February 12, 2021, DLSE's Deputy Labor Commissioner Juana Escalante issued four  
8 (4) Retaliation Citations, Citation Nos. 580891, 580927, 580924 and 580950, one per  
9 Complainant, against the following entities:

- 10 1. R & B Sanchez, Inc., a dissolved California Corporation, dba McDonald's
- 11 2. R & B Sanchez, form unknown, dba McDonald's;
- 12 3. Robert E. Sanchez, an individual, dba McDonald's;
- 13 4. Beverly A. Sanchez, an individual, dba McDonald's; and
- 14 5. Brian Sanchez, an individual, dba McDonald's, all jointly and severally liable.

15 On December 30, 2021, the Labor Commissioner issued Amended Citations based upon  
16 information that a cited individual, Mr. Robert E. Sanchez, had passed away, leading to  
17 ownership and entity changes. At the outset of the administrative hearing the parties stipulated to  
18 amend the relevant Appellants to be:

- 19 1. R & B Sanchez, a California general partnership between Robert E. Sanchez and  
20 Beverly A. Sanchez, dba McDonalds;
- 21 2. Robert E. Sanchez, an individual, dba McDonald's, or in the alternative, Estate of  
22 Robert E. Sanchez;
- 23 3. Beverly A. Sanchez, an individual, dba McDonalds;
- 24 4. Brian Sanchez, an individual, dba McDonalds, and;
- 25 5. DRS Hospitality LLC, a California Limited Liability Company, dba McDonald's, all  
26 jointly and severally liable (hereinafter "Appellants").

27 Further, all allegations regarding violations of Labor Code section 1102.5 were dropped  
28 by the Labor Commissioner, thus allegations regarding 1102.5 are omitted below.

1 Amended Citations 580891 (Lizzet Aguilar), 580927 (Guadalupe Rolon), 580924  
2 (Salomon Sanchez) and 580950 (Rocio Avila) were issued by the Labor Commissioner to  
3 Appellants pursuant to Labor Code section 98.74 for violations of Labor Code sections 98.6. In  
4 each respective citation Appellants were cited for a \$10,000.00 Civil Penalty per Labor Code  
5 section 98.6, payable to each Complainant respectively.

6 Appellants were also cited for back wages for each Complainant, and the Citations each  
7 included an audit of back pay attached as Attachment B summarizing the calculation of lost  
8 wages for each Complainant. Back wages for Lizzet Aguilar were cited in the amount of  
9 \$14,787.45 plus \$1,149.04 in interest on those wages, with interest continuing at \$4.05 per day  
10 until paid. Back wages for Guadalupe Rolon were cited in the amount of \$15,414.45, plus  
11 \$1,203.10 in interest on those wages, with interest continuing at \$4.22 per day until paid. Back  
12 wages for Salomon Sanchez were cited in the amount of \$20,518.60, plus \$1,561.09 in interest on  
13 those wages, with interest continuing at \$5.62 per day until paid. Back wages for Rocio Avila  
14 were cited in the amount of \$10,370.30, plus \$805.46 in interest on those wages, with interest  
15 continuing at \$2.84 per day until paid.

16 The Citations also seek the “Other Remedies” of: “Unconditional Reinstatement Offer”,  
17 “Post Notice to Employees”, “Purge Respondent’s files of adverse action(s)”; and, “Cease and  
18 desist from further retaliation”. In the alternative to unconditional reinstatement of each  
19 Complainant, Appellants were cited for Front Pay in the amounts of \$25,200.00 for Aguilar and  
20 Rolon, \$18,000.00 for Sanchez, and \$11,520.00 for Avila.

### 21 **III. APPELLANT’S CONTENTIONS**

22 Appellants assert in defense to the allegations in the Citations that:

- 23 1. The Citations are preempted by the National Labor Relations Act;
- 24 2. The strike activity relied upon in the Citations was not a qualifying “exercise of a  
25 right” required by Labor Code section 98.6;
- 26 3. No adverse action was taken here as there was no termination, instead Complainants  
27 abandoned their jobs;
- 28 4. Complainants had no reasonable belief that the alleged health and safety issues were

1 violations of the law;

2 5. The evidence does not show that the alleged termination was substantially motivated  
3 by the alleged protected activity;

4 6. The Claimants were not credible in their claims of health and safety violations; and,

5 7. The investigator issuing the citations was not credible on the question of employer  
6 knowledge of complaints and failed to distinguish between alleged knowledge of  
7 strikes and alleged knowledge of county/state health and safety complaints.

8 **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9 **1. BURDEN OF PROOF AND LEGAL STANDARDS.**

10 **a. Generally, in Administrative Hearings.**

11 In administrative hearings, the Labor Commissioner as the party coming forward has the  
12 initial burden of proof. “Burden of proof” is defined in California Evidence Code section 115 as  
13 “the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in  
14 the mind of the trier of fact or the court.” In these administrative hearings, the trier of fact is the  
15 hearing officer appointed to hear and decide the matter. Evidence Code section 115 further  
16 provides: “Except as otherwise provided by law, the burden of proof requires proof by a  
17 preponderance of the evidence.” “Preponderance of the evidence” means evidence that has more  
18 convincing force than that opposed to it. (Cal. Jury Instr.--Civ. 2.60.) The preponderance of the  
19 evidence standard “simply requires the trier of fact ‘to believe that the existence of a fact is more  
20 probable than its nonexistence.’ ” (*In re Angelia P.* (1981) 28 Cal.3d 908, 918 citation omitted.)

21 **b. Prima Facie Case and Burden Shifting for Labor Code section 98.6.**

22 To establish a prima facie violation of Labor Code section 98.6, the Labor Commissioner  
23 must prove: (1) that Complainants engaged in a protected activity; (2) that Appellants subjected  
24 each of Complainants to an adverse action; and, (3) that Complainants protected activity  
25 substantially motivated Appellants’ adverse action. (*Garcia-Brower v. Premier Automotive*  
26 *Imports of CA, LLC* (2020) 55 Cal.App.5th 961, 977.)

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1           Once a prima facie claim of retaliation is established, Appellants are required to offer a  
2 legitimate, non-retaliatory reason for the adverse employment action. (*Yanowitz v. L'Oreal USA,*  
3 *Inc.* (2005) 36 Cal.4th 1028, 1042.) If Appellants produce a legitimate reason for the adverse  
4 employment action, the burden shifts back to the DLSE to prove that Appellants' proffered  
5 explanation is unworthy of credence or merely a pretext for retaliation. (*Ibid.*) This burden  
6 shifting is commonly known as the "*McDonnell Douglas*" burden shifting and "originated in the  
7 context of a Title VII case, where a plaintiff was required to show that he was denied employment  
8 "because of his involvement in civil rights activities" or "because of his race and color." (*Lawson*  
9 *v. PPG Architectural Finishes, Inc.* (2020) F.3d 752, 756.)

10           **c. Labor Code section 98.74 Authorizes the Labor Commissioner to Issue Citations**  
11 **for Violations of Retaliation Protections of the Labor Code and Must be**  
12 **Harmonized with the Labor Code Source of Liability, Here Section 98.6.**

13           Labor Code section 98.74 was enacted to give the California Labor Commissioner the  
14 power to issue citations for violations of anti-retaliation statutes under the California Labor Code  
15 with remedies for back wages, interest, civil penalties due to the worker and/or the State, as well  
16 as any, and all appropriate relief. (Lab. Code §98.74.) Other appropriate relief includes orders to  
17 cease and desist from retaliation and take any action necessary to remedy the violation, including,  
18 where appropriate, rehiring or reinstatement, reimbursement of lost wages and interest thereon,  
19 and posting notices to employees. (*Id.*, sub. (a).) Here, the citations issued against Appellants  
20 pursuant to Labor Code section 98.74 were for violations of Labor Code section 98.6.

21           **d. Labor Code section 98.6.**

22           Labor Code section 98.6 prohibits a "person" from retaliating against an employee  
23 because the employee exercised a right afforded them under the Labor Code. (*Grinzi v. San Diego*  
24 *Hospice Corp.* (2004) 120 Cal.App.4th 72, 87.) The term "person" is defined at Labor Code  
25 section 18 to mean "any person, association, organization, ownership, business trust, limited  
26 liability company or corporation." (Lab. Code §18.)

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1 **2. FINDINGS OF FACT.**

2 **a. Complainant Lizzet Aguilar.**

3 In April 2020, the beginning of the COVID-19 pandemic, Lizzet Aguilar began raising  
4 health and safety concerns with Marengo McDonald’s store manager, Yesenia Duran. Aguilar  
5 testified that she complained to Duran that the local government mask mandate and social  
6 distancing guidelines were not being followed at the Marengo McDonalds. Aguilar testified that  
7 she also complained to Duran that Appellants failed to provide sufficient personal protective  
8 equipment (“PPE”) for workers at the Marengo McDonalds. Aguilar testified that despite  
9 employee complaints, Appellants kept PPE in locked offices, restricting employee access and that  
10 employees were told to reuse PPE. Aguilar explained that her complaints to Duran regarding  
11 health and safety stemmed from her experience working concurrently at another McDonald’s  
12 restaurant in West Hollywood owned and operated by a different franchisee. Aguilar testified that  
13 the other McDonald’s “had the gloves within sight, and we could get the masks whenever we  
14 needed them. And whenever a person had been exposed that person was placed on quarantine and  
15 they would do the cleaning and the McDonald’s would be closed immediately. And a professional  
16 team would be called to do the cleaning to do deep cleaning.” (Day 1, Rough Transcript (“RT”),  
17 pages 60-61, lines 27-06.)

18 Aguilar discussed COVID-19 cases with her co-workers at the Marengo McDonalds,  
19 leading her to believe that Duran and Appellants were withholding information from her and her  
20 co-workers about co-workers sick with or testing positive for COVID-19. Aguilar saw  
21 Appellants’ manager Jaime Gutierrez visit the Marengo McDonalds in late May 2020 and  
22 observed him reviewing camera footage of the workers in the restaurant with Duran. Duran  
23 explained at hearing that she and Gutierrez were reviewing the film to see if any employees were  
24 exposed to an employee who had COVID-19. At hearing Brian Sanchez admitted that no workers  
25 were ordered to quarantine by Appellants on that occasion as Appellants believed contact with an  
26 infected person had to be sustained for fifteen continuous minutes. Appellants interpreted this to  
27 mean that since workers were constantly moving around the store, not one worker was required to  
28

1 quarantine for exposure. Consequently, no mention of infections at the store were made to  
2 Aguilar or other workers.

3         Aguilar testified about a day where she finished her shift at the Marengo McDonalds and  
4 moved on to her second job at the McDonalds in West Hollywood that evening. Later that night  
5 Aguilar received a call from Duran, where Duran inquired if she planned to work the next day  
6 and told Aguilar that there was a positive COVID-19 case at the Marengo McDonalds. Duran did  
7 not tell her who it was, which is understandable for privacy reasons, but she also didn't tell  
8 Aguilar if she had been exposed. Even per Appellants' interpretation of exposure, Duran was  
9 vague as to Aguilar being exposed or not. Aguilar knew from word around the store which  
10 employees had become ill with COVID-19, and she knew she had been exposed to that person the  
11 day before and should have been ordered to quarantine. Similarly, in June 2020, Aguilar asked  
12 Duran why two employees were off work and Duran told her they were in Mexico. Aguilar later  
13 learned that Duran had ordered those two employees to isolate during that time as they had tested  
14 positive for COVID-19.

15                   **i.     Aguilar Enlists Help of "Fight for \$15" Organizers.**

16         Aguilar testified that her complaints to Appellants' management were not being taken  
17 seriously as no changes were made. Aguilar enlisted the help of "The Fight for \$15" who assisted  
18 Aguilar and her co-workers assert complaints about health and safety issues to push Appellants to  
19 provide a safe workplace as Aguilar hoped. Complainants lack the ability to speak, read or write  
20 in English proficiently, and needed assistance in communicating in writing with Appellants.  
21 Credible testimony from Complainants and Arnold Peña Perez from "The Fight for \$15" made  
22 clear that the "The Fight for \$15" staff helped Complainants translate and transcribe their  
23 complaints, as well as helping to plan and execute health and safety strikes and car caravan  
24 protests at the Marengo McDonalds. "The Fight for \$15" staff helped Aguilar create a video in  
25 which she stated her health and safety related demands of Appellants. Aguilar testified that one of  
26 the times that Aguilar called into the Marengo McDonalds and spoke to Duran, Duran  
27 acknowledged seeing this video showing knowledge of Aguilar's complaints.  
28

1                   **ii. Complainants File Health and Safety Complaints.**

2                   On June 1, 2020, Lizzet Aguilar filed a complaint with the Los Angeles County Health  
3 Department regarding the Marengo McDonalds. (Ex. 4, pgs. 1-5.) Aguilar made health and safety  
4 complaints regarding the Marengo McDonald's response to the COVID-19 Pandemic, alleging  
5 that in late May 2020 workers from the Marengo McDonalds were sent to "deep clean" another  
6 McDonald's franchise known to them as "The Daly Store" that had reported infections of  
7 employees with COVID-19. Aguilar alleged that these workers were ordered to return to the  
8 Marengo McDonalds without precautions taken to prevent them from spreading COVID-19.  
9 Aguilar also alleged that Appellants were not providing workers at the Marengo McDonalds with  
10 new masks, instead instructing workers to wear old masks.

11                   On June 26, 2020, Aguilar filed a second complaint with the Los Angeles County Public  
12 Health Department, this time carbon copying California Department of Industrial Relations,  
13 Division of Occupational Safety and Health ("Cal OSHA"). (Ex. 4, pgs. 6-17.) Aguilar was joined  
14 in her second complaint by several co-workers including Complainant Rocio Avila.

15                   **iii. Complainants Refuse to Work Under Unsafe Conditions, Going Out on**  
16 **a Health and Safety Strike.**

17                   On July 9, 2020, Complainants went out on a health and safety strike, refusing to work  
18 under what they perceived to be unsafe conditions at the Marengo McDonalds due to Appellants'  
19 lack of response to their complaints regarding COVID-19 and to protect themselves from the  
20 dangerous conditions at the Marengo McDonalds. (1 RT 51-53; 73; 83-85; 129; 2 RT 19-20; 22;  
21 66-67; 79-82; 91; 3 RT 18-21). Notice of the health and safety strike was sent to R&B Sanchez  
22 management, which included the names of the employees participating and their demands  
23 regarding health and safety. (Exh. 5; 1 RT 50-53; 83-86; 103;105; 129-132; 2 RT 66-67; 79; 90-  
24 91; 3 RT 18-21; 58; 76-83; 88-90;96; 101-108; 160-161 [Yesenia Duran]; 4 RT 6 [confirming  
25 Marengo store main telephone number]; 4 RT 78 [Brian Sanchez]; 110-111; [Brian Sanchez];  
26 114-118 [Brian Sanchez]; 123).

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1                   **iv. Complainants Protest in Car Caravans Outside Marengo McDonalds.**

2                   As a further escalation of complaints to Appellants, Complainants participated in several  
3 car caravan protests outside of the Marengo McDonald's. Complainants and other co-workers  
4 voiced their demands that Appellants take their concerns about COVID-19 related health and  
5 safety seriously. They did so publicly and in front of the Marengo McDonalds, showing up in a  
6 caravan of cars covered in signs and loudly stating their health and safety demands. Aguilar  
7 participated with other workers in at least five (5) protests in front of the Marengo McDonalds in  
8 the months of July and August 2020. Aguilar saw managers from the Marengo McDonalds  
9 including Duran observe these protests. Aguilar and her co-workers had signs on the cars  
10 demanding that Appellants keep their employees safe from COVID-19. (Ex. 29.) Complainants  
11 had assistance from "The Fight for \$15" staff in planning and executing the car caravan protests.

12                   **v. Complainants File Third Complaint while Continuing to Strike and**  
13 **Protests at the Marengo McDonalds.**

14                   On July 10, 2020, Aguilar filed her third complaint, reiterating the same complaints and  
15 allegations, but adding urgency that the employer had not yet corrected these issues. In this third  
16 complaint, Aguilar was joined by Complainant Salomon Sanchez. (Ex. 4, pgs. 13-17.) On July 11,  
17 2020, Duran called Aguilar and asked if she was going to be at work next week, and Aguilar said  
18 no that she would still be on strike.

19                   On July 14, 2020, Complainants received information that an employee at the Marengo  
20 McDonalds tested positive for COVID-19. The employee worked closely with other employees at  
21 Appellants' Marengo McDonalds, but those employees were not informed of their exposure nor  
22 ordered to quarantine by Appellants. Instead, the exposed employees continued working.

23                   On July 24, 2020, this was conveyed to Appellants in a subsequent Strike Notice along  
24 with Complainants' intent to return to work "once the store has been properly cleaned and  
25 workers who tested positive for COVID-19 and those who worked closely with them have been  
26 quarantined for 14 days." (Ex. 5, p. 16.)

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28

1                    **vi. Unfair Labor Practice Charge Filed with National Labor Relations**  
2                    **Board.**

3                    A “Charge Against Employer” was filed with the National Labor Relations Board  
4 (“NLRB”) on behalf of Lizzet Aguilar alleging:

5                    Since on or about June 9, 2020, the Employer has threatened to retaliate against  
6 workers if they go on strike or engage in other union activity or protected  
7 concerted activity, and has retaliated against Lizzet Aguilar, including by  
8 assigning more onerous tasks and enforcing rules more strictly against her, in  
9 retaliation for her union activity and protected concerted activity.

10                    (Ex. 16, pg. 2.) The charge was withdrawn before any adjudication of the matter by the NLRB.

11                    **vii. Marengo McDonalds Inspected by Los Angeles County.**

12                    The anonymous health and safety complaints led to a “Complaint Investigation” by the  
13 County of Los Angeles Public Health Department of the Marengo McDonalds on July 31, 2020.  
14 (Ex. 18.) The information provided about this inspection is sparse both as to testimony and  
15 documents, and without details of what was inspected, nor who was interviewed. It is unclear if  
16 the County’s health inspections dealt with COVID-19 issues from the evidence at hearing. The  
17 inspection itself was titled a “complaint investigation” and differed from routine inspections.

18                    **b. Complainant Rocio Avila.**

19                    Rocio Avila also worked at the Marengo McDonalds during the early COVID-19  
20 pandemic. Like Aguilar, Avila testified that she feared for her own safety in her workplace due to  
21 the COVID-19 pandemic. Avila testified that there was no social distancing in her workspace, no  
22 six (6) feet of separation nor any barriers between employees. Avila testified that she was fearful  
23 at work because management let customers flaunt mask mandates in the restaurant and drive thru.  
24 Avila complained to management that she was not provided sufficient PPE nor hand sanitizer.

25                    Avila testified that employees at the Marengo McDonalds began getting infected with  
26 COVID-19, but management was not alerting staff. Instead, like Aguilar, Avila found out about  
27 infections in her workplace from her coworkers who were assigned to deep clean the restaurant.

28                    Avila joined in Aguilar’s second written complaint dated June 26, 2020, to the Los  
Anges County Public Health Department and Cal OSHA regarding continued health and safety

1 concerns due to management's failure to take reasonable steps to protect essential workers from  
2 COVID-19. (Ex. 4, pgs. 6-17.)

3 In July 2020, Avila went out on a health and safety strike, refusing to return to work at the  
4 Marengo McDonalds due to her fear of unsafe working conditions. Complainants were on a  
5 health and safety strike demanding safe conditions at the Marengo McDonalds including:  
6 professional cleaning of the restaurant, proper access to PPE, enforcement of social distancing  
7 requirements, enforcement of customer masking requirements, access to hand sanitizer and  
8 reasonable efforts by management to protect the employee's health and safety in the restaurant.  
9 While striking Avila participated in at least five (5) car caravan health and safety protests outside  
10 of the Marengo McDonalds. Avila testified that she saw that Duran was observing her during  
11 each car caravan protest she participated in. Avila was part of the group of Complainants who  
12 later tried to meet with Appellant Brian Sanchez to negotiate health and safety conditions and  
13 Complainants' return to work.

14 **c. Complainant Salomon Sanchez.**

15 Salomon Sanchez worked for Appellants starting in 2015 in their kitchen at the Marengo  
16 McDonalds. Like Aguilar and Avila, Sanchez was concerned with his health and safety at work  
17 due to COVID-19. Salomon testified Appellants failed to protect him from the spread of the virus  
18 by failing to provide sufficient PPE including masks and gloves, failing to enforce customer  
19 masking requirements and failing to enforce social distancing. Sanchez complained to  
20 Appellants' kitchen manager, Cirila, who said she would speak to store manager Yesenia Duran.  
21 Sanchez spoke about his concerns with Complainant Avila as well, leading to his participation in  
22 the health and safety strike and at least four (4) of the car caravan protests outside of the Marengo  
23 McDonalds. Sanchez signed on to the various letters sent to Appellants seeking changes at the  
24 restaurant to protect his health and safety including strike notices. Sanchez was part of the group  
25 of Complainants who later tried to meet with Appellant Brian Sanchez to negotiate health and  
26 safety conditions and Complainants' return to work.

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1           **d. Complainant Guadalupe Rolon.**

2           Guadalupe Rolon started working at the Marengo McDonalds in February 2017 as a cook  
3 in the kitchen. Rolon testified that Appellants failed to properly provide for worker safety during  
4 the early part of the COVID-19 pandemic. In April 2020, Rolon complained to Appellants’  
5 manager Yesenia Duran that Appellants did not provide sufficient PPE or hand sanitizer for  
6 employees at the Marengo McDonalds. Like Aguilar, Rolon worked at another McDonalds  
7 owned by a different franchisee and based her expectations of what a reasonable response to the  
8 COVID-19 pandemic was on what she saw this other McDonalds’ franchisee provided their  
9 workers. Rolon was also concerned that Appellants were not notifying her and her co-workers  
10 when an employee they worked with had contracted COVID-19. Rolon had seen her other  
11 McDonalds employer shut down the restaurant for a professional cleaning when there was a  
12 COVID-19 case there. Rolon was worried that as Appellants did not follow suit, they were  
13 exposing their workers as those workers who cleaned the restaurant would return to work without  
14 quarantining after exposure.

15           Rolon testified that her concerns were also based on changes in Appellants’ practices from  
16 before the pandemic. Rolon explained that Appellants only began rationing gloves during the  
17 pandemic. Similarly, Appellants provided hand sanitizer before the pandemic and even trained  
18 employees on its use, but it was absent during the early pandemic. Rolon testified that she also  
19 complained to her supervisor, Mayda Rodriguez, about the lack of available gloves and hand  
20 sanitizer who told her she would ask Duran about it. Rolon went out on health and safety strike  
21 around July 17, 2020, and participated in three (3) car caravan health and safety protests in July  
22 and August 2020. Rolon was part of the group of Complainants who later tried to meet with  
23 Appellant Brian Sanchez to negotiate health and safety conditions and Complainants’ return.

24           **e. Appellants Refusal to Meet with Complainants.**

25           On July 29, 2020, all four Complainants and Brian Sanchez had agreed to meet in person  
26 and discuss the Complainants concerns and their return to work for Appellants. Complainants  
27 planned to meet with Brian Sanchez and let him know the health and safety conditions they faced,  
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1 hoping he would fix those issues and allow them to return safely to their jobs. Complainants had  
2 enlisted “The Fight for \$15” to help them with translation for the meeting with Brian Sanchez to  
3 discuss their health and safety related work concerns and negotiate a return to work. This meeting  
4 broke down when Brian Sanchez refused to meet with Complainants as a group nor to allow  
5 translation by the organizer from “Fight for \$15”, instead Brian Sanchez cancelled the meeting  
6 altogether. Aguilar tried to reschedule by calling Appellants, but with no luck.

7 **f. Complainants Offer to Return to Work.**

8 Thereafter on August 17, 2020, Complainants Aguilar, Avila, Rolon and Sanchez, with  
9 the help of “Fight for \$15” staff in transcription and translation, sent a letter to Appellants  
10 indicating that they were ready to return to work unconditionally. (Ex. 6.) Appellants refused to  
11 comply with Complainants’ demands for safer working conditions, even refusing to discuss those  
12 concerns and demands with them. Despite this, Complainants conceded the point and offered an  
13 unconditional return to work. The letter was sent to Duran via WhatsApp messaging application,  
14 mailed to Appellants’ attorneys, and mailed to the Marengo McDonalds. Brian Sanchez  
15 acknowledged the letter at hearing.

16 **g. Appellants Terminate Complainants for Alleged “Job Abandonment”.**

17 On or around September 12, 2020, Complainants each received a letter from Appellants  
18 informing them that they had been terminated for “job abandonment”. (Ex. 7.) At hearing Brian  
19 Sanchez testified that Appellants had made that decision several weeks prior to sending this  
20 termination letter, at least earlier than August 17, 2020, despite agreeing to meeting with workers  
21 on that day to discuss their return to work. There was no explanation at hearing why this decision  
22 was not communicated to Complainants at the time it was made.

23 **h. Yesenia Duran, Marengo McDonalds Store Manager.**

24 Yesenia Duran started managing the Marengo McDonalds in March 2020. Duran testified  
25 that workers never complained to her about PPE, hand sanitizer or social distancing. Duran  
26 testified that workers were not required to re-use PPE. Duran testified that every case of COVID-  
27 19 at the Marengo McDonalds was dealt with according to McDonald’s corporate policy and  
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1 regulations. Duran denied seeing customers in the drive-thru line without masks.

2 Duran admitted receiving text messages from Rolon and Salomon Sanchez containing  
3 strike notices, as well as receiving calls from Aguilar and Avila in which they gave her notice of  
4 their strikes. Duran also admitted to witnessing several car caravan protests, acknowledging that  
5 the signs on the cars caravanning around the Marengo McDonalds were about health and safety.  
6 Duran admitted that the Marengo McDonalds is “always hiring” and that Complainants were  
7 “really good workers” for her before the pandemic, that had had no issues with attendance or  
8 otherwise, before going out on their health and safety strike. Duran also admitted that workers  
9 who took unpaid time off would often be rehired when they returned asking for work.

10 **i. Appellant Brian Sanchez, Human Resources Manager.**

11 Brian Sanchez, Human Resources Manager for R & B Sanchez and Appellant herein, is  
12 also the nephew of Appellants Robert Sanchez and Beverly Sanchez. Brian Sanchez was made  
13 Appellant’s corporate representative for the administrative hearing and sat through the testimony  
14 of all other witnesses before testifying himself. Brian Sanchez had little personal knowledge of  
15 what went on at the Marengo McDonalds as he was not involved in day-to-day operations.  
16 Instead, Brian Sanchez worked out of Appellants’ West Covina headquarters managing Human  
17 Resources and Training for sixteen (16) McDonalds franchises owned by his family. Brian  
18 Sanchez was only at the Marengo McDonalds once or twice per week during the relevant period.

19 Brian Sanchez testified that he had no impression that his employees at the Marengo  
20 McDonalds were fearful during the early pandemic (March to July of 2020). He testified that the  
21 Marengo McDonalds had several workers test positive for COVID-19 who worked in the  
22 restaurant in July 2020, but that no employees were ordered to quarantine. Brian Sanchez  
23 explained that he and Appellants interpreted that exposure requiring isolation required contact for  
24 a sustained fifteen (15) minute period within six feet. Brian Sanchez explained that because  
25 workers moved around the restaurant, in and out of this six (6) foot range, Appellants believed  
26 they did not have to alert employees or order them to isolate.

27 Brian Sanchez admitted to knowing about Complainants being out on a health and safety  
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1 strike and to seeing two of them protesting outside of the Marengo McDonalds. He also admitted  
2 to knowing about text messages sent to Yesenia Duran, but denied that he knew those text  
3 messages contained strike notices.

4 Brian Sanchez testified on direct that Miquelly was put back on the schedule after her  
5 name appeared on the strike notice. (4 RT 88:19-90:17.) Brian Sanchez testified that he knew that  
6 complainants had been “no call / no show” and he was interested in addressing their concerns and  
7 putting them back to work. (4 RT 122:21-123:2.)

8 During cross-examination the following hypotheticals were posed to Brian Sanchez:

9 Q: If it were up to you, would you have taken them back?

10 A: If they would have talked to me about what’s going on rather than trying to  
11 make a show of it, how they did.

12 (4 RT 124: 9-13.)

13 During cross-examination Brian Sanchez discussed the Marengo McDonald’s hiring  
14 practices concerning the re-hire of employees who failed to show up for a scheduled shift and had  
15 not called in before the shift, or “no call / no showing” :

16 Q: Okay. Let me ask you, and it's a hypothetical so you can tell me you don't  
17 know. If a worker, say, were to do that, okay? A worker who you didn't have any  
18 problem with before, and let's say a month later the worker comes back and says,  
19 "you know what, I would like to come back," would you hire them?

20 A: They would have to go through the interview process again.

21 Q Okay. Would their no call / no show prevent them from being hired?

22 A I guess their history; it would be in conjunction with their history, their  
23 performance.

24 (4 RT, 127-128: 19-5.) The questioning about the effect of “no call / no shows” on rehire  
25 continued:

26 Q: Okay. So for example, if a worker had stolen money out of the cash register and  
27 got fired and then came back a month later, would you hire that worker back?

28 A: No, because they violated policy.

1 (4 RT, 128: 6-10.)

2 Q: So, does a no call / no show for more than three days without a doctor's note  
3 basically mean that you're never going to get hired back at McDonald's again?

4 A: Not necessarily.

5 Q: If you know.

6 A: Not necessarily, okay. If it's a good worker, maybe.

7 Q: You don't know what could have happened; correct?

8 A: Correct. That's why it's up to them to let us know what's going on.

9 Q: To come in and be interviewed for a job and maybe get rehired.

10 A: Yes.

11 (4 RT, 128:12-24, sic.)

12 Q: So, on my hypothetical -- the hypothetical worker who basically abandons his  
13 job and then comes back in a month and wants to be rehired, if I remember  
14 correctly your answer is, we'd interview him and see whether we wanted to rehire  
15 him or not; correct?

16 A: Yes.

17 Q: Why were the complainants not given that same consideration in this case?

18 A: Well, we attempted to have a meeting with them and they didn't want to meet  
19 individually, and they wanted to use a translator who we had -- I had no idea who  
20 that woman was.

21 (4 RT, 129-130: 18-4.)

22 Brian Sanchez further admitted that the decision not to rehire Complainants was made by  
23 himself and owners Robert Sanchez, Beverly Sanchez and Dean Sanchez, with advice from  
24 counsel.

25 Brian Sanchez failed to explain why the Complainants unconditional offer to return to  
26 work never resulted in the company's *de facto* policy of interviewing workers for re-hire after "no  
27 call / no show" histories. Instead, Brian Sanchez admitted that the complainants were treated  
28 differently because of their request to discuss health and safety complaints.

1 Q: Why then, once these workers submitted the offer to return to work, did you not  
2 consider that offer?

3 A: By that time it was over a month that they had worked and they had stated they  
4 would return within 14 days, and they never returned. And after we had that  
5 meeting, the meeting that never happened, the decision was made that they  
6 abandoned their jobs.

7 (4 RT, 130:13-17, sic.)

8 **3. ANALYSIS.**

9 **a. The Early COVID-19 Pandemic in Los Angeles.**

10 On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 directing  
11 all residents to immediately heed current State public health directives to stay home, “except as  
12 needed to maintain continuity of operations of essential critical infrastructure sectors and  
13 additional sectors as the State Public Health Officer may designate as critical to protect health and  
14 well-being of all Californians.” (Executive Order N-33-20.) Thereafter the State Public Health  
15 Officer designated a list of Essential Critical Infrastructure Workers, which included fast food  
16 workers, to help state, local, tribal, and industry partners as they work to protect communities,  
17 while ensuring continuity of functions critical to public health and safety, as well as economic  
18 and national security. (See Covid19.ca.gov.)

19 **b. Complainants Raised Health and Safety Complaints, Refused to Work Under**  
20 **Unsafe Conditions and then Offered to Return to Work Unconditionally.**

21 Complainants Lizzet Aguilar, Guadalupe Rolon, Rocio Avila, and Salomon Sanchez all  
22 worked at the Marengo McDonalds for Appellants as essential workers during the early days of  
23 COVID-19 pandemic. Complainants feared the pandemic and what it meant for their health and  
24 safety as well as the health and safety of their families. While general concern about the global  
25 pandemic has subsided by the time of this decision, the level of fear during the relevant time  
26 period must be taken into account here.

27 Despite voicing concerns to management directly, Complainants health and safety  
28 complaints were unheeded by Appellants. Complainants filed claims with the Los Angeles

1 County Health Department and Cal-OSHA. Complainants went out on a health and safety strike,  
2 refusing to work based on a reasonable belief that they were in danger at the Marengo McDonalds  
3 but announcing that they would return as soon as health and safety conditions were improved.

4 During their health and safety strike Complainants further asserted public complaints by  
5 protesting in car caravans about health and safety conditions outside of the Marengo McDonalds  
6 on at least five (5) occasions. The manner in which Complainants protested, a car caravan, was  
7 COVID-19 conscious and shows that Complainant’s fear of the virus was not relegated to work,  
8 as they took safety precautions on their own time. Appellants failed to make changes regarding  
9 health and safety and then refused to meet with Complainants to discuss their concerns and  
10 negotiate a return to work. Despite this, Complainants thereafter offered to return to work  
11 unconditionally, but were refused by Appellants and were told that they abandoned their jobs.

12 **c. Labor Code section 98.6 Protections.**

13 Labor Code section 98.6 protects workers against retaliation for exercising “any rights”  
14 under the California Labor Code. (*Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal.App.4th 72,  
15 87.) Appellants argue that *Grinzi* limits application here, when it instead held that Labor Code  
16 section 98.6 protects employees who exercise *any right under the California Labor Code* from  
17 retaliation. (*Id.*) In *Grinzi*, the court found that “the Legislature did not intend section 98.6 to  
18 establish public policy against terminations for conduct not protected under the Labor Code.”  
19 (*Grinzi, supra*, 120 Cal. App. 4th at 77.) In *Grinzi*, the court looked to the findings and  
20 declarations of policy that were adopted with the relevant amendment to Section 98.6:

21 The Legislature finds and declares that, absent the protections by the Labor  
22 Commissioner, working men and women are ill-equipped and unduly  
23 disadvantaged in any effort to assert their individual rights *otherwise protected by*  
24 *the Labor Code*. The Legislature finds it necessary and appropriate to provide  
25 employees an inexpensive administrative remedy for the pursuit of their rights  
*under the Labor Code*. The Legislature further declares that this act is necessary to  
further the state interest in protecting the rights of individual employees and job  
applicants who could not otherwise afford to protect themselves.

26 (*Id* at 87 (quoting Stats. 2001, ch. 820, §1, p. 5201 (italics added in *Grinzi*)).) *Grinzi* held that this  
27 language indicated that the legislature intended to limit the phrase “any rights” to those  
28 “otherwise protected under the Labor Code.” (*Id.*) Further, *Grinzi* held that there is support for

1 this conclusion in the fact that the initial portion of Section 98.6 proscribes termination based  
2 only on certain types of conduct that are “otherwise protected by the Labor Code” and in the  
3 Legislative Digest of the 2001-2002 amendment (*Id.*)

4 Appellants here ignore a distinct difference between the matter in *Grinzi* and here. While  
5 *Grinzi* dealt with both Labor Code sections 96, sub. (k) and 98.6. Here, Complainants were  
6 exercising rights under Labor Code sections 6310 and 6311, which are clearly protected under the  
7 Labor Code. Yet Appellants argue that *Grinzi* “concluded that this prohibition can be applied only  
8 to conduct protected by the Labor Code,” but that is exactly what is here in this matter: conduct  
9 protected by Labor Code sections 6310 and/or 6311. Neither Sections 6310 nor 6311 were part of  
10 the facts of *Grinzi*, nor the other cases cited by Appellants: *Hollie v. Concentra Health Services,*  
11 *Inc.* (2012 WL 993522) and *Weingand v. Harland Financial Solutions, Inc.* (2012 WL 3537035).

12 The *Hollie* case involved a doctor who walked out of his clinic while patients were  
13 waiting to be served over a dispute in overtime premium pay. While the complaint would have  
14 been covered by the Labor Code, refusing to work in this context was not seen as a complaint, nor  
15 was it tied here to health and safety per Labor Code sections 6311 and 6400. The *Weingand* case  
16 Appellants cite to deals with Labor Code section 1102.5, not Section 98.6, and in 2012 before  
17 Section 1102.5 was amended substantively the next year on the very issue reviewed. (*Id.*) Thus,  
18 neither of these cases are relevant herein.

19 Here, the Labor Commissioner issued citations per Labor Code section 98.74 for  
20 violations under Labor Code section 98.6 for violating Labor Code sections 923, 6310 and 6311,  
21 only seeking to enforce illegal retaliation where the Labor Code was violated, and thus in line  
22 with the holding in *Grinzi*.

23 **i. Labor Code section 6310.**

24 Labor Code section 6310 protects workers who make complaints about workplace health  
25 and safety. Here, Complainants engaged in protected activity per Labor Code section 6310 by  
26 making various types of complaints, escalating as time went by.

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1 First, Complainants filed written complaints with government entities, first the Los  
2 Angeles County Health Department and subsequently also complaining to Cal OSHA. These  
3 government complaints are expressly protected by Section 6310. While these complaints were  
4 anonymous, they led to a “complaint inspection” of the restaurant by the Health Department.

5 Second, during this same period, Complainants also made complaints to various  
6 supervisors including Yesenia Duran. These complaints are fleshed out above at length and  
7 included concerns about lack of adequate PPE, lack of social distancing, customers violating  
8 masking orders in the lobby and drive-thru, Appellants’ lack of transparency around employee  
9 exposure to COVID-19 and Appellants failure to have exposed employees isolate.

10 Third, Complainants complained publicly by protesting outside of Marengo McDonalds in  
11 car caravans at least five (5) times over these same health and safety issues. (See Ex. 29.) Brian  
12 Sanchez and Yesenia Duran both admitted to being aware of the protests and seeing  
13 Complainants in car caravans protesting outside of the Marengo McDonalds with signs  
14 announcing health and safety concerns.

15 Fourth, Complainants went out on a health and safety strike, including sending written  
16 strike notices to Appellants which included complaints drawing attention to Complainants on-  
17 going demands that Appellants provide safe conditions at the Marengo McDonalds in the context  
18 of the early pandemic. Appellants admitted on cross-examination that they knew of the strikes.  
19 Brian Sanchez admitted that the reason Complainants were terminated was because they “made a  
20 show of it” which clearly alluded to the strike and protest activities.

21 Fifth, Complainants attempted to meet with Brian Sanchez to discuss these very same  
22 health and safety complaints and negotiate their return to work. Brian Sanchez admitted that at  
23 the time of the attempted meeting he knew about Complainants health and safety complaints.

24 Appellants dispute Claimants allegations that they did not provide a safe workplace. Labor  
25 Code section 6310 protects an employee against retaliation for complaining in good faith about  
26 working conditions or practices which he or she reasonably believes to be unsafe. (*Hentzel v.*  
27 *Singer* (1982) 138 Cal.App.3d 290, 299.)

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1 Here it is clear that during the early COVID-19 Pandemic, Complainants reasonably  
2 believed their health and safety was put at extreme risk by Appellants actions and especially  
3 inactions at the Marengo McDonalds. Complainants worked at more than one McDonalds, and  
4 had personal knowledge of how other franchisees handled health and safety issues during this  
5 same period. Complainants were also able to offer comparisons between policy before the  
6 pandemic at the Marengo McDonalds. Complainants engaged in several forms of protected  
7 activity in the form of various complaints about health and safety conditions, reasonably seen as  
8 dangerous in the context of the early pandemic, per Labor Code section 6310.

9 **ii. Labor Code section 6311.**

10 Labor Code section 6311 protects workers from retaliation for refusing to perform work  
11 under unsafe conditions. Unlike Section 6310, which protects against retaliation for complaints  
12 about unsafe working conditions, Section 6311 violations involve an out-right refusal to perform  
13 work. (*DeSoto v. Yellow Freight Systems, Inc.* (9th Cir. 1992) 957 F.2d 655, 658.)

14 The Labor Code was amended in 1973 to add Labor Code section 6311 to ensure that state  
15 law provided protection against retaliation at least as effective as the protection provided under  
16 the federal Occupational Safety and Health Act. Earlier that same year, the U.S. Secretary of  
17 Labor adopted a federal regulation protecting “the right of an employee to refuse to perform his  
18 assigned task because of a reasonable apprehension of death or serious injury coupled with a  
19 reasonable belief that no less drastic alternative is available.” (29 CFR § 1977.12; *see, Whirlpool*  
20 *Corporation v. Marshall* (1980) 445 U.S. 1, 3 (holding this regulation valid).)

21 Thus, for an unsafe condition to constitute a “real and apparent hazard” within the  
22 meaning of Section 6311, a reasonable person, under the circumstances confronting the  
23 employee, would conclude that she faces an imminent danger of death or serious injury, and  
24 consequently, has insufficient time to attempt to eliminate the danger through resort to regular  
25 statutory channels, such as by contacting the Division of Occupations Safety and Health (DOSHS)  
26 to conduct an inspection.

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1 Labor Code section 6400 requires every employer to “furnish employment and a place of  
2 employment that is safe and healthful for the employees therein.” (Lab. Code §6400, subd. (a).)

3 Complainants here engaged in protected activity under Labor Code section 6311 when  
4 they went out on a health and safety strike, refusing to work under unsafe conditions that a  
5 reasonable person would conclude presented a real and apparent hazard.

6 As discussed above, the context of the early COVID-19 global pandemic must be  
7 considered here to fully understand and analyze if Complainants were reasonable. Complainants,  
8 like most of the country at the time, had limited knowledge of the virus besides knowing that it  
9 was killing thousands of people per day, to the extent that refrigerator trucks full of corpses were  
10 being shown on the evening news. This fear and concern led Complainants to attempt to engage  
11 with Appellants’ management in hopes of having these concerns addressed. The evidence shows  
12 that Complainants attempted various means to seek remediation of unsafe conditions by  
13 complaining to managers, complaining to Cal-OSHA and the County Health Department, but  
14 despite those efforts Complainants were only hearing from their co-workers that no  
15 improvements were made, and that staff continued to be infected with COVID-19. This context  
16 along with the credible testimony of Complainants prove that they acted reasonable in refusing to  
17 continue to work under unsafe conditions as allowed to continue by Appellants.

18 Instead of Appellants remediating unsafe conditions, seemingly no attempts were made to  
19 fix conditions that Complainants faced. Appellants continued to fail to inform their employees  
20 about being exposed to the virus. In the context of the global pandemic Complainants had a very  
21 reasonable belief that if they continued to work at the Marengo McDonalds under the conditions  
22 that Appellants failed to remediate they were at great risk of being exposed to COVID-19 and the  
23 ravages of the disease that did not yet have a vaccine. Again, at that time it was widely believed  
24 that one may die from exposure in the workplace or spread the virus to a vulnerable family  
25 member risking their life. Complainants attempted to seek remediation of unsafe conditions from  
26 Appellants’ but their complaints were not heeded. Complainants complained to government  
27 agencies, without seeing anything come of that. Complainants took their complaints public,  
28 protesting in car caravans outside of the restaurant. After all that, they saw no sign of Appellants

1 remediating the unsafe conditions. Thus, Complainants were reasonable in refusing to work, and  
2 their refusal was protected activity under Labor Code section 6311.

3 **d. There is No National Labor Relations Act Preemption to this State Action for**  
4 **Illegal Retaliation Arising from Employee Health and Safety Complaints.**

5 Appellants assert that the citations here are fully preempted by the National Labor  
6 Relations Act (“NLRA”). Central to Appellants allegations of preemption is the “Charge Against  
7 Employer” filed on Lizzet Aguilar’s behalf with the National Labor Relations Board (“NLRB”)  
8 alleging Unfair Labor Practices. (Ex. 16.) The charge was withdrawn from the NLRB before it  
9 was adjudicated (complaint is quoted in full above).

10 **i. Garmon Preemption.**

11 Where a state law claim *may* be covered by the NLRA, the United States Supreme Court  
12 has given us a two-part test to determine if the state law matter is preempted by the NLRA. (*Local*  
13 *926, Intl. Union of Op. Eng., AFL-CIO v. Jones* (1983) 460 US 669, 676 (“*Jones*”), citing *San*  
14 *Diego Unions v. Garmon* (1959) 359 US 236, 245 (“*Garmon*”).) So called *Garmon* Preemption  
15 protects the NLRA’s original jurisdiction over conduct which is prohibited or protected by the  
16 NLRA. (*Garmon, supra.*)

17 First, under *Garmon* Preemption it is determined whether the conduct that the state seeks  
18 to regulate or to make the basis of liability is actually or arguably protected or prohibited by the  
19 NLRA. (*Id.*) Second, where a state tries to regulate or to make the basis of liability a subject  
20 arguably covered by the NLRA, we continue under the *Garmon* Preemption test to ascertain if the  
21 protection and/or prohibition the state is enforcing “is only a peripheral concern of the [NLRA] or  
22 touches so deeply rooted in local feeling and responsibility that, in the absence of compelling  
23 congressional direction, it could not be inferred that Congress intended to deprive the state of the  
24 power to act” no preemption lies. (*Id.*, citing *Garmon* at 778.)

25 The determination of *Garmon* Preemption “must depend upon the nature of the particular  
26 interests being asserted and the effect upon the administration of national labor policies of  
27 concurrent judicial and administrative remedies” (*Vaca v Sipes* (1967) 386 US 171, 180.) “The  
28

1 NLRA is concerned primarily with establishing an equitable process for determining terms and  
2 conditions of employment.” (*Metro. Life Ins. Co. v. Mass* (1985) 471 US 724, 753-54 (“*Metro.*  
3 *Life*”).) The Supreme Court in *Metro. Life* discussed the legislative purpose of the NLRA,  
4 analyzing its relation to state laws regulating occupational health and safety and held that:

5 [I]n light of Congressional enactments that foster state regulation of health and  
6 safety, and the fact that state regulation of occupational health and safety is a  
7 regulation of general application that in no way interferes with the legislative goals  
of the NLRA . . . , we hold that the [NLRA does] not preempt appellants'  
independent state law cause of action for wrongful discharge.

8 (*Id* at 866.)

9 In *Paige v. Henry J. Kaiser Co.* (1987) 826 F.2d 857, the Ninth Circuit Court of Appeal  
10 ruled that construction workers in California were not barred by *Garmon* Preemption from  
11 pursuing their state law claims for wrongful termination in retaliation for reporting dangerous  
12 health and safety conditions on the work site to Cal OSHA. The workers in *Paige* invoked Labor  
13 Code sections 6310, 6311, 6400, 6401, 6403 and 6404 “based on Cal OSHA provisions requiring  
14 employers to provide a safe place of employment and prohibiting the discharge of employees who  
15 complain of unsafe working conditions to their employer.” (*Id* at 862, fn. 7, fn. 1.)

16 In *Inter-Modal Rail Employees, Ass’n. v. Burlington Northern and Santa Fe Ry. Co.*  
17 (1999) 73 Cal.App.4th 918 (“*Inter-Modal*”), a California Appellate Court relied on *Paige, supra*  
18 in a case involving union complaints regarding health and safety violations and retaliatory  
19 discharge of more than 200 employees, ruling that retaliatory discharge claims arising out of  
20 concerted activity over health and safety issues were not preempted by the NLRA. In reaching  
21 this conclusion the court in *Inter-Modal* cited *Paige* for the proposition that “in light of  
22 Congressional enactments that foster state regulation of health and safety, and the fact that state  
23 regulation of occupational health and safety is a regulation of general application that in no way  
24 interferes with the legislative goals of the NLRA, ... federal labor laws do not preempt ...  
25 independent state law cause[s] of action for wrongful discharge” in retaliation for raising health  
26 and safety issues. (*Id* at 926, citing *Paige, supra*, 826 F.2d at 865.)

27 **i. No *Garmon* Preemption Here for Health and Safety Related Issues.**

28 Just as in *Paige* and *Inter-Modal*, the California Labor Code protections and prohibitions

1 that the Labor Commissioner seeks to enforce as to Labor Code sections 6310, 6311 and 6400  
2 constitute health and safety complaints “deeply rooted in local feeling and responsibility”.

3 While here, Aguilar and the Complainants were assisted in asserting health and safety  
4 complaints to their employer by employees of “The Fight for \$15”, it is the conduct regulated  
5 here that is relevant not who helped the workers assert their protected activities.

6 The protected activity and the rights being demanded here regarding violations of Labor  
7 Code sections 6310 and 6311 are deeply rooted local concerns. Thus, it is clear that as to Sections  
8 6310 and 6311 what the state seeks “to regulate or to make the basis of liability” by issuing these  
9 citations is to prevent retaliation against employees who complain about unsafe working  
10 conditions and/or refuse to work under unsafe working conditions. These health and safety  
11 regulations are “only a peripheral concern of the [NLRA]” that “touches so deeply rooted in local  
12 feeling and responsibility that, in the absence of compelling congressional direction, it could not  
13 be inferred that Congress intended to deprive the state of the power to act”. Thus, the portion of  
14 the Labor Commissioner’s citations dealing with violations of Labor Code sections 6310 and  
15 6311 are not preempted by the National Labor Relations Act here.

16 **e. The Portion of the Citations Dealing with Labor Code section 923 are Preempted**  
17 **Under *Garmon*.**

18 Labor Code section 923 is a different matter altogether as instead of relating to health and  
19 safety, Section 923 protects the right of workers to join together collectively and to choose  
20 representatives to negotiate terms and conditions of employment with their employers and  
21 prohibits retaliation against workers for exercising this right. (*Grant Burton v. Covenant Care,*  
22 *Inc.* (2002) 99 Cal,App,4th 1361, 1374-76.) Further, Labor Code section 923 taken together with  
23 Labor Code section 98.6 protects an employee against retaliation for exercising their rights to join  
24 together as a collective of workers and/or to designate a representative, attorney or otherwise, to  
25 represent them for the purpose of negotiating the terms and conditions of employment. (*See,*  
26 *Montalvo v. Zamora* (1970) 7 Cal.App.3d 69; *Gelini v. Tishgart* (1999) 77 Cal.App.4th 219.)  
27 While Labor Code section 923 may not be wholly preempted by the NLRA as the Section  
28 contains several clauses, such an assertion regarding a single employee appointing a

1 representative or assertions by employees not covered by the NLRA, here Section 923 is being  
2 asserted exactly on point with the NLRA. “Where the NLRA’s provisions are “almost identical”  
3 to the state statute at issue, there is a clear case for *Garmon* preemption.” (*Sarmiento v. Sealy, Inc.*  
4 (2019) 367 F.Supp.3d 1131, 1149 citing *Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of*  
5 *Carpenters* (1978) 436 U.S. 180, 192.) Thus, all allegations of liability under Labor Code section  
6 98.6 due to a violation of Labor Code section 923 are preempted here.

7 **f. Adverse Action.**

8 Appellants allege in their closing brief that there was no adverse action here, asserting  
9 instead that Complainants abandoned their jobs. Appellants put on evidence to the effect that the  
10 written policies of the Marengo McDonalds were followed to the letter and that Complainants  
11 lack of communication around their health and safety strike led to them abandoning their jobs  
12 pursuant to restaurant policy. The evidence clearly shows that Appellants made the decision to  
13 end the employment relationship. Appellants terminated Complainants by sending them a letter  
14 telling them they had been terminated due to job abandonment. Thus, the adverse action here was  
15 termination of Complainants by Appellants. The job abandonment reason must be analyzed as  
16 either a legitimate business decision or a pretext to excuse illegal retaliation.

17 **g. Causal Connection.**

18 A causal connection between protected activity and an adverse action may be established  
19 by showing that the employer knew of the protected activity and took action against the employee  
20 within a relatively short time period. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.App.4th 317,  
21 354; *Morgan v. Regents of the University of California* (2000) 88 Cal.App.4th 52, 67-68.) Here  
22 we have proximity in time between the adverse action and protected activities<sup>1</sup>, but we also have  
23 admissions by Appellants’ witnesses as to causal connection.

24 Appellants make much of their alleged lack of knowledge early on in Complainants’  
25 protected complaints to try to push Appellants to provide them with a safe working environment.  
26

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27 <sup>1</sup> The proximity in time should be measured not from the protected activity to the termination letter,  
28 but from the protected activity to sometime before August 17, 2020, due to Brian Sanchez’s admissions on  
cross-examination that that is when the decision was made.

1 Yesenia Duran’s testimony presented as rehearsed during direct examination. She denied that  
2 workers complained at all about health and safety conditions, which lacked credibility as it would  
3 be expected in such a chaotic time that workers would have complaints. Marengo McDonald’s  
4 likely encountered some supply shortages that may have led to the lack of PPE or other COVID-  
5 19 related protections as Complainants allege. It is the denial of any complaints during this  
6 intense climate of fear that lacks credibility in the face of credible testimony by Complainants to  
7 the contrary. The overall evidence presented at hearing reflected a much more chaotic and  
8 haphazard situation, thus the blanket denial of that reality shows her testimony to be self-serving  
9 and not compelling.

10 Like Duran, Brian Sanchez presented as rehearsed and testified that the restaurant fully  
11 complied with the law and McDonald’s corporate policies. Brian Sanchez denied any  
12 shortcomings at the Marengo McDonalds relating to health and safety in the early pandemic.

13 The evidence presented establishes that Brian Sanchez possessed little in the way of  
14 personal knowledge of the day-to-day at the restaurant to support his conclusions that there was  
15 safety compliance with Covid protocols. In this regard the testimony of Lizzet Aguilar,  
16 Guadalupe Rolon, Rocio Avila, Salomon Sanchez, is credited as more reliable and the basis for  
17 finding that they each possessed a good faith belief that they were being subjected to unsafe  
18 working conditions prohibited by Labor Code section 6400.

19 Appellants point to the anonymity of the written complaints to government entities. While  
20 these were indeed anonymous, Appellants did not decide to file Complainants at that time, and  
21 thus that is not the end of the inquiry.

22 As the situation escalated, the Complainants complained and refused to work, going out  
23 on a health and safety strike, and participating in at least five (5) car caravan protests with clear  
24 signage regarding health and safety concerns outside of the Marengo McDonalds. Appellants at  
25 some point became aware of both the health and safety strike and health and safety protests, with  
26 admissions by Duran and Brian Sanchez discussed at length above. (See also, 4 RT 78 110;  
27 115;123-124; Ex. 5; Ex. 29.) Respondents possessed this information at the time that claimants  
28 sought to return to work, but Appellants refused them, instead sending termination letters.

1           The Strike Notices delivered to Appellants expressly described Complainants by name,  
2 their health and safety concerns, and their reasons for striking including the various health and  
3 safety related complaints laid out above. (Ex. 5.) Duran admitted to receiving written Strike  
4 Notices from two of the Complainants. Complainants protested in a car caravan at least five (5)  
5 times as discussed above, and Duran and Brian Sanchez admitted they were aware of this.

6           Even if Appellants didn't know who each of the four (4) Complainants were before the  
7 meeting attempted on July 29, 2020, the evidence supports the finding that by the time of the  
8 meeting, Brian Sanchez knew who each Complainant was. Brian Sanchez's testimony confirmed  
9 that the show Complainants made of their health and safety complaints led to their termination.  
10 By July 29, 2020, Brian Sanchez had agreed to meet with Complainants. Brian Sanchez admitted  
11 that by this point he knew the four Complainants had concerns about health and safety relating to  
12 COVID-19 and that they wanted to return to their jobs. (4 RT 121-122; 126.)

13           Brian Sanchez admitted at hearing that if Complainants had not *made a show of it*, he  
14 would have heard them out and possibly rehired them depending on their histories. Duran had  
15 testified Complainants all had good work histories at the Marengo McDonalds. These facts taken  
16 together show that Brian Sanchez refused to hear them out because they refused to work under  
17 what they believed to be unsafe conditions and asserted complaints about those unsafe working  
18 conditions by complaining to Duran, refusing to work under those conditions, holding car caravan  
19 protests and filing complaints with government entities.

20           Brian Sanchez, Appellant and representative of his fellow Appellants, admitted that the  
21 decision to fire Complainants was made by himself, Robert Sanchez, Beverly Sanchez and Dean  
22 Sanchez and that Complainants would have been considered for rehire if they didn't make such a  
23 show of their health and safety complaints.

24           Or put another way, Brian Sanchez admitted that he, his aunt, his uncle and his cousin  
25 terminated Complainants for exercising their rights under the Labor Code. Specifically  
26 terminating them for "making a show" of their health and safety complaints, their right under  
27 Labor Code section 6310, and for exercising their rights under Labor Code section 6311 by  
28 refusing to work under unsafe conditions violative of Labor Code section 6400.

1 Brian Sanchez further admitted that by the time he received Complainants' August 17,  
2 2020 letter offering an unconditional return to work that "the decision that they abandoned their  
3 job had already been made" by Appellants. This was a full month before Appellants sent  
4 termination letters to Complainants. Complainants' refusal to work under unsafe conditions and  
5 complaining about those conditions constituted activity protected under Sections 6310 and 6311,  
6 and Brian Sanchez's testimony, cited at length above, was an admission that an adverse action  
7 was taken because Complainants engaged in activities protected by the Labor Code.

8 Appellants never explained why they waited until September 2020 to send termination  
9 letters to Complainants. Furthermore, they never explained why Miquelly Martinez, a worker  
10 who also appeared on strike notices, was later rehired. Brian Sanchez only told us that it was  
11 because Complainants "made a of show of it." Therefor the causal connection is found.

12 **h. Appellants' Claim "Job Abandonment" as a Legitimate Business Reason for**  
13 **Terminating Complainants.**

14 To establish that an employment decision was made for legitimate, nondiscriminatory  
15 reasons, an employer need only explain the reasons for the decisions it made. (*Wills v. Super. Ct.*  
16 (2011) 195 Cal. App. 4th 143, 160.) The burden is not an onerous one. (*Bd. of Trustees of Keene*  
17 *State Coll. v. Sweeney* (1978) 430 U.S. 24, 24-25 n.2.) Yet when upon cross-examination that  
18 alleged legitimate reason is shown to be a pretext through admissions against the employer's  
19 interest, the pretext is set aside.

20 Appellants insist that they did not retaliate against Complainants, but instead just followed  
21 McDonalds' internal policies which led them to conclude that Complainants had abandoned their  
22 jobs. But as laid out above and discussed below, Yesenia Duran and Brian Sanchez's' testimony  
23 was inconsistent with their alleged business justification.

24 Job abandonment, the alleged business reason for not rehiring Complainants is not  
25 consistent with the facts or the policies practiced by Marengo McDonalds. Both Yesenia Duran  
26 and Brian Sanchez testified that Marengo McDonalds was "constantly hiring" and that a worker  
27 who "no call / no showed" without what Brian Sanchez referred to as "making a show of it"  
28 would likely be rehired by Appellants. Upon cross examination Yesenia Duran and Brian



1 Sanchez both admitted that what Appellants called a “no call / no show” was not actually a  
2 violation that would prevent rehire by Appellants, despite their written policy. In fact, Duran and  
3 Sanchez admitted that Appellants’ employees came and went and were only barred from re-hire  
4 for more serious violations of policy not having to do with attendance. Furthermore, Brian  
5 Sanchez contended that Appellants had already decided that Complainants had abandoned their  
6 jobs prior to August 17, 2020, long before they sent termination letters to Complainants in  
7 September 2020. If this decision had already been made, that was both contrary to how Marengo  
8 McDonalds operated why were the complainants not told? Further, and most importantly, Brian  
9 Sanchez admitted that he would have re-hired Complainants if they had not “made a show” of  
10 their health and safety complaints, an admission that the protected activity discussed at length  
11 above was the substantial motivating factor for Appellants to terminate Complainants. Finally,  
12 why was Miguelly Martinez, who did not request a meeting to discuss health and safety at the  
13 worksite, rehired after a “no call / no show” to attend the protest?

14 Appellants contention that they took no adverse action because they were simply  
15 following their job abandonment policy must also be rejected. While Appellants were able to  
16 point to written policies that employees who “no call / no showed” were to be terminated, Brian  
17 Sanchez and Yesenia Duran admitted that that policy often gave way to the reality that many of  
18 Appellants’ employees came and went, working as they were available, and were often rehired  
19 after quitting or “no call / no showing.” Brian Sanchez made an important distinction on cross-  
20 examination that true terminable offenses without any possibility of re-hire existed at Marengo  
21 McDonalds, such as stealing, but attendance issues did not rise to that level. The evidence  
22 supports the conclusion that attendance issues were not heavily weighed by Appellants in the  
23 decision to re-hire a former employee. Thus, the *de facto* and actual policy at the Marengo  
24 McDonalds set by Appellants’ actual practice was that workers rotated between various locations  
25 back and forth, and may be fired for not showing up, but most of those who had quit or been fired  
26 for attendance issues would get rehired as long as they didn’t commit a truly terminable offense  
27 with no right to rehire, for example, stealing. Brian Sanchez’s testimony constitutes an admission  
28 that job abandonment, despite the written policies discussed on direct, was not itself a bar to

1 rehire. In fact Brian Sanchez testified that he rehired a worker who had been on the walkout but  
2 who was not one of the complainants who requested the group meeting to discuss health and  
3 safety at the workplace. Thus, there was an adverse action, and the proffered legitimate business  
4 reason is a pretext for unlawful retaliation for engaging in protected activity under the Labor  
5 Code, complaining about and refusing to work under unsafe working conditions.

6 Here, Appellants R&B Sanchez, Robert E. Sanchez, Beverly A. Sanchez and Brian  
7 Sanchez all engaged in retaliation in violation of Labor Code section 98.6 by terminating  
8 Complainants for making health and safety related complaints, going out on health and safety  
9 strike and engaging car caravan protests outside of the Marengo McDonalds. The decision to  
10 terminate Complainants was based upon their protected activities as Brian Sanchez admitted.  
11 Further, Appellants made the decision to retaliate against Complainants at least a month before  
12 they sent them termination letters.

13 Here, the Labor Commissioner established by preponderance of the evidence that  
14 Appellants R & B Sanchez, a California general partnership between Robert E. Sanchez and  
15 Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez, an individual, dba McDonald's, or in  
16 the alternative, Estate of Robert E. Sanchez; Beverly A. Sanchez, an individual, dba McDonalds;  
17 and, Brian Sanchez, an individual, dba McDonalds, terminated Complainants because they  
18 exercised rights under Labor Code sections 6310 and 6311, *making a show* of their complaints  
19 and refusal to work regarding health and safety in relation to the COVID-19 pandemic.

20 Further, Brian Sanchez admitted that beyond Complainants' "making a show" of  
21 complaints about and their refusal to work under unsafe conditions, part of his reason for refusing  
22 to engage with Complainants in negotiations to improve health and safety conditions and their  
23 return to work on July 29, 2020 was that they brought an organizer from "The Fight for \$15".  
24 Like the admissions about "making a show", this admission shows that the proffered reason for  
25 Complainants' termination, job abandonment, was not legitimate but a pretext.

26 DRS Hospitality LLC, a California Limited Liability Company, dba McDonald's was  
27 stipulated as the successor of Appellants R & B Sanchez, a California general partnership  
28 between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez, an

1 individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez; Beverly A.  
2 Sanchez, an individual, dba McDonalds, and is therefore also joint and severally liable here.

3 **i. Appellants R&B Sanchez, Robert E. Sanchez, Beverly A. Sanchez and Brian**  
4 **Sanchez Are Persons Who Caused the Violations per Labor Code section 98.6.**

5 Labor Code section 98.6 prohibits retaliation by any "person" who violates the statute's  
6 provisions (Lab. Code §98.6.) Labor Code section 98.74 calls for a citation to be issued to "the  
7 person who has been determined to be responsible for the violation." (Lab. Code §98.74.)

8 In this case the evidence showed that R&B Sanchez, Robert E. Sanchez, Beverly A.  
9 Sanchez and Brian Sanchez all were persons who caused the violations by deciding to terminate  
10 Complainants for "making a show" of their health and safety concerns. Brian Sanchez was in  
11 charge of the situation on the ground, and admitted that Robert E. Sanchez, Beverly A. Sanchez  
12 and Dean Sanchez made the ultimate decision, with his input and suggestion, to terminate  
13 Complainants. Dean Sanchez was also a person who violated the statute but was not named here.

14 Brian Sanchez admitted that a hypothetical worker who violated R&B Sanchez's "no call /  
15 no show" policy would be given an opportunity to explain their failure to comply with policy, and  
16 – if they were a good worker – would be rehired. (4 RT 123-124; 126-131.) Brian Sanchez further  
17 admitted that he made this decision with Robert E. Sanchez and Beverly A. Sanchez.

18 **j. Appellants R&B Sanchez, Robert E. Sanchez, Beverly A. Sanchez, Brian Sanchez**  
19 **and DRS Hospitality Must Reimburse Complainants' Back Wages plus Interest.**

20 The Labor Commissioner cited Appellants R & B Sanchez, a California general  
21 partnership between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E.  
22 Sanchez, an individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez;  
23 Beverly A. Sanchez, an individual, dba McDonalds; Brian Sanchez, an individual, dba  
24 McDonalds, and; DRS Hospitality LLC, a California Limited Liability Company, dba  
25 McDonald's, all jointly and severally liable for Citation Nos. 580891, 580927, 580924 and  
26 580950 for: (1) \$14,787.45, plus interest, in lost wages owed to Lizzet Aguilar; (2) \$15,414.45,  
27 plus interest, in lost wages owed to Guadalupe Rolon; (3) \$20,518.60, plus interest, in lost wages  
28 owed to Salomon Sanchez; and, (4) \$10,370.30 in lost wages, plus interest owed to Rocio Avila.

1 Back pay is the worker’s lost wages through the time of trial (or citation, in this case).  
2 (*See Horsford v. Bd. of Trs. of Cal. State Univ.* (2005) 132 Cal. App. 4th 359, 388.) “Wages” are  
3 construed broadly, so back pay can also cover other benefits to which the worker was entitled to  
4 as compensation, including but not limited to, room, board, clothing, vacation pay, sick pay,  
5 bonuses, commissions, tips, health insurance costs actually incurred, holiday pay, overtime pay,  
6 and pensions. (*See Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands,*  
7 *Inc.*, 244 F.3d 1152, 1157 (9th Cir. 2001); *Farmer Bros., Co.*, 31 F.3d at 902; *County of Alameda*  
8 *v. Fair Emp’t & Housing Comm’n* (1984) 153 Cal. App. 3d 499, 509; *see also Schachter v.*  
9 *Citigroup, Inc.*(2009) 47 Cal. 4th 610, 618.)

10 At hearing Complainants testified credibly as to their average hours of work, which  
11 matched the calculations of back pay wages assessed in the citations. Appellants only testimony  
12 challenging these calculations was from Brian Sanchez, who seemed to simply state that  
13 Complainants were wrong without explaining his personal knowledge or presenting documents  
14 clearly available to Appellants as the employer. An employer is required to keep records of  
15 Complainants wages earned and hours worked. (See Labor Code section 226.) An employee can  
16 rely on their own recollection to recreate wage earned and hours worked for liability reasons  
17 where an employer fails to properly keep or provide such legally required records. (*Furry v. East*  
18 *Bay Publishing, LLC* (2018) 30 Cal.App.5th 1072; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d  
19 721.) Thus, Brian Sanchez’s recollection is not relevant here, as he was required to present specific  
20 evidence to rebut Complainants recollection under the *Furry/Hernandez* evidentiary burden shifting.  
21 After careful review and there being no substantive opposition, the calculations are affirmed.

22 As discussed above Labor Code section 98.6(a) makes “a person” liable for remedies  
23 under that statute, besides those remedies only assigned to “an employer”. (See Lab. Code §98.6,  
24 subs. (b)(2) and (b)(3).) Here, Appellants R&B Sanchez, Robert E. Sanchez, Beverly A.  
25 Sanchez, Brian Sanchez and DRS Hospitality, LLC are all joint and severally liable for back  
26 wages and interest as assessed in Citation Nos. 580891, 580927, 580924 and 580950.

27 ///

28 ///



1 If DRS Hospitality LLC, a California Limited Liability Company, dba McDonald's does  
2 not make an unconditional offer of reinstatement within 10 days of this decision becoming final  
3 they are to ordered to pay to Complainants front pay in the following amounts:

- 4 - Lizzet Aguilar – Citation No. 580891 – Front Pay: \$25,200.00;
- 5 - Guadalupe Rolon – Citation No. 580927 – Front Pay: \$25,200.00;
- 6 - Saloman Sanchez – Citation No. 580924 – Front Pay: \$18,000.00; and,
- 7 - Rocio Avila – Citation No. 580950 – Front Pay: \$11,520.00.

8 Having found Appellants liable for retaliation Appellants future employees face  
9 irreparable harm if subjected to similar actions by Appellants, thus a cease-and-desist order is  
10 required here. Should a prospective employer of Complainants inquire with Appellants they  
11 would face irreparable harm if their personnel files were not purged of records of retaliation  
12 against him. Appellants made no argument regarding these non-monetary remedies; they are thus  
13 affirmed as cited.

#### 14 **IV. ORDER**

15 Based on the foregoing, **IT IS HEREBY ORDERED** that:

16 1. **Citation No. 580891 is modified as follows:**

- 17 a. **Lost Wages:** Appellants R & B Sanchez, a California general partnership between  
18 Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez, an  
19 individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez;  
20 Beverly A. Sanchez, an individual, dba McDonalds; Brian Sanchez, an individual,  
21 dba McDonalds; and DRS Hospitality, LLC., dba McDonalds are liable to Lizzet  
22 Aguilar for back wages in the amount of \$14,787.45 plus \$1,149.04 in interest on  
23 those wages through the date of the Citation, September 4, 2020, with interest  
24 continuing from the date of Citation at \$4.05 per day until paid.
- 25 b. **Civil Penalties:** Appellants R & B Sanchez, a California general partnership  
26 between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E.  
27 Sanchez, an individual, dba McDonald's, or in the alternative, Estate of Robert E.  
28 Sanchez; Beverly A. Sanchez, an individual, dba McDonalds; and, DRS Hospitality,

1           LLC., dba McDonalds are liable for \$10,000.00 in Civil Penalties per Labor Code  
2           section 98.6, subd. (b)(3) as Complainant Aguilar's employer, payable to Aguilar.

3           c. **Other Remedies:** Appellant DRS Hospitality LLC, a California Limited Liability  
4           Company, dba McDonald's, as successor to R & B Sanchez, a California general  
5           partnership between Robert E. Sanchez and Beverly A. Sanchez, is liable and  
6           responsible for prospective remedies and is thus ordered to:

- 7                           i. Make Lizzet Aguilar an unconditional offer of reinstatement;
- 8                           ii. Post the Notice to Employees form attached to the Citation;
- 9                           iii. Purge files containing reference to the adverse action taken against  
10                          Lizzet Aguilar, her termination;
- 11                          iv. Cease and desist from further retaliation; and,
- 12                          v. Where DRS Hospitality LLC refuses to extend an unconditional offer  
13                          of reinstatement to Lizzet Aguilar within ten (10) days of this order  
14                          becoming final they will pay her \$25,200.00 in front pay, plus  
15                          interest from the date the decision is final.

16           2. **Citation No. 580927 is modified as follows:**

17           a. **Lost Wages:** Appellants R & B Sanchez, a California general partnership between  
18           Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez, an  
19           individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez;  
20           Beverly A. Sanchez, an individual, dba McDonalds; Brian Sanchez, an individual,  
21           dba McDonalds; and DRS Hospitality, LLC., dba McDonalds are liable to  
22           Guadalupe Rolon for back wages in the amount of \$15,414.45 plus \$1,203.10 in  
23           interest on those wages through the date of the Citation, September 4, 2020, with  
24           interest continuing from the date of the Citation at \$4.22 per day until paid.

25           b. **Civil Penalties:** Appellants R & B Sanchez, a California general partnership  
26           between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E.  
27           Sanchez, an individual, dba McDonald's, or in the alternative, Estate of Robert E.  
28

1 Sanchez; Beverly A. Sanchez, an individual, dba McDonalds; and, DRS Hospitality,  
2 LLC., dba McDonalds are liable for \$10,000.00 in Civil Penalties per Labor Code  
3 section 98.6, subd. (b)(3) as Complainant Rolon's employer, payable to Rolon.

4 c. **Other Remedies:** Appellant DRS Hospitality LLC, a California Limited Liability  
5 Company, dba McDonald's, as successor to R & B Sanchez, a California general  
6 partnership between Robert E. Sanchez and Beverly A. Sanchez, is liable and  
7 responsible for prospective remedies and is thus ordered to:

- 8 i. Make Guadalupe Rolon an unconditional offer of reinstatement;
- 9 ii. Post the Notice to Employees form attached to the Citation;
- 10 iii. Purge files containing reference to the adverse action taken against  
11 Guadalupe Rolon, her termination;
- 12 iv. Cease and desist from further retaliation; and,
- 13 v. Where DRS Hospitality LLC refuses to extend an unconditional offer  
14 of reinstatement to Guadalupe Rolon within ten (10) days of this  
15 order becoming final they will pay her \$25,200.00 in front pay, plus  
16 interest from the date the order is final.

17  
18 3. **Citation No. 580924 is modified as follows:**

19 a. **Lost Wages:** Appellants R & B Sanchez, a California general partnership between  
20 Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez,  
21 an individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez;  
22 Beverly A. Sanchez, an individual, dba McDonalds; Brian Sanchez, an individual,  
23 dba McDonalds; and DRS Hospitality, LLC., dba McDonalds are liable to  
24 Saloman Sanchez for back wages in the amount of \$20,518.60 plus \$1,561.09 in  
25 interest on those wages through the date of the Citation, September 4, 2020, with  
26 interest continuing from the date of Citation at \$5.62 per day until paid.

27 b. **Civil Penalties:** Appellants R & B Sanchez, a California general partnership  
28 between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E.



1 Sanchez, an individual, dba McDonald's, or in the alternative, Estate of Robert E.  
2 Sanchez; Beverly A. Sanchez, an individual, dba McDonalds; and, DRS  
3 Hospitality, LLC., dba McDonalds are liable for \$10,000.00 in Civil Penalties per  
4 Labor Code section 98.6, subd. (b)(3) as Complainant Sanchez's employer,  
5 payable to Sanchez.

6 c. **Other Remedies:** Appellant DRS Hospitality LLC, a California Limited Liability  
7 Company, dba McDonald's, as successor to R & B Sanchez, a California general  
8 partnership between Robert E. Sanchez and Beverly A. Sanchez, is liable and  
9 responsible for prospective remedies and is thus ordered to:

- 10 i. Make Saloman Sanchez an unconditional offer of reinstatement;
- 11 ii. Post the Notice to Employees form attached to the Citation;
- 12 iii. Purge files containing reference to the adverse action taken against  
13 Saloman Sanchez, her termination;
- 14 iv. Cease and desist from further retaliation; and,
- 15 v. Where DRS Hospitality LLC refuses to extend an unconditional offer  
16 of reinstatement to Saloman Sanchez within ten (10) days of this  
17 order becoming final they will pay her \$18,000.00 in front pay, plus  
18 interest from the date the order is final.

19 4. **Citation No. 580950 is modified as follows:**

20 a. **Lost Wages:** Appellants R & B Sanchez, a California general partnership between  
21 Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E. Sanchez, an  
22 individual, dba McDonald's, or in the alternative, Estate of Robert E. Sanchez;  
23 Beverly A. Sanchez, an individual, dba McDonalds; Brian Sanchez, an individual,  
24 dba McDonalds; and DRS Hospitality, LLC., dba McDonalds are liable to Rocio  
25 Avila for back wages in the amount of \$10,370.30 plus \$805.46 in interest on those  
26 wages through the date of the Citation, September 4, 2020, with interest continuing  
27 from the date of the Citation at \$2.84 per day until paid.

28 b. **Civil Penalties:** Appellants R & B Sanchez, a California general partnership

1 between Robert E. Sanchez and Beverly A. Sanchez, dba McDonalds; Robert E.  
2 Sanchez, an individual, dba McDonald's, or in the alternative, Estate of Robert E.  
3 Sanchez; Beverly A. Sanchez, an individual, dba McDonalds; and, DRS Hospitality,  
4 LLC., dba McDonalds are liable for \$10,000.00 in Civil Penalties per Labor Code  
5 section 98.6, subd. (b)(3) as Complainant Avila's employer, payable to Avila.

6 c. **Other Remedies:** Appellant DRS Hospitality LLC, a California Limited Liability  
7 Company, dba McDonald's, as successor to R & B Sanchez, a California general  
8 partnership between Robert E. Sanchez and Beverly A. Sanchez, is liable and  
9 responsible for prospective remedies and is thus ordered to:

- 10 i. Make Rocio Avila an unconditional offer of reinstatement;
- 11 ii. Post the Notice to Employees form attached to the Citation;
- 12 iii. Purge files containing reference to the adverse action taken against  
13 Rocio Avila, her termination;
- 14 iv. Cease and desist from further retaliation; and,
- 15 v. Where DRS Hospitality LLC refuses to extend an unconditional offer  
16 of reinstatement to Rocio Avila within ten (10) days of this order  
17 becoming final they will pay her \$11,520.00 in front pay, plus  
18 interest from the date the order is final.

19 5. Further, please take notice that as provided by Labor Code section 98.74, subd. (e): In  
20 addition to any other appropriate relief, an employer who willfully refuses to comply  
21 with a final order pursuant to this section to hire, promote, or otherwise restore an  
22 employee or former employee who has been determined to be eligible for relief, or who  
23 refuses to comply with an order to post a notice to employees or otherwise cease and  
24 desist from the violation, in addition to any other penalties available, shall be subject to  
25 a penalty of one hundred dollars (\$100) per day for each day the employer continues to  
26 be in noncompliance with the order, up to a maximum of twenty thousand dollars  
27 (\$20,000). Any penalty pursuant to this subdivision shall be paid to the affected  
28 employee.

1 **IT IS SO ORDERED.**

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Dated: February 16, 2023

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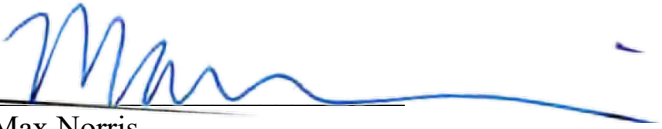
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STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

By:   
Max Norris  
Hearing Officer

State of California  
Department of Industrial Relations  
DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY EMAIL**

**Case Name: Aguilar et al. v. R&B Sanchez, Inc. dba McDonald's et al.**  
**State Case No. RCI-CM-808459; RCI-CM-808461; RCI-CM-808450; RCI-CM-808467**  
**RCI Citation Nos. RCI-580891; RCI-580950; RCI-580927; RCI-580924**

I, Lindsey Lara, do hereby certify that I am a resident of or employed in the County of Los Angeles, over 18 years of age, not a party to the within action, and that I am employed at and my business address is:

**LABOR COMMISSIONER, STATE OF CALIFORNIA**  
1500 Hughes Way, Suite C-202  
Long Beach, CA 90810

On February 16, 2023, I served the foregoing document described as: **NOTICE OF FINDINGS AND ORDER**, on all interested parties in this action via e-mail to the e-mail address of the addressee(s) set forth below.

<p>Clinton Robison, Esq. O'HAGAN MEYER 21550 Oxnard Street, Suite 1050 Woodland Hills, CA 91367 <a href="mailto:crobison@ohaganmeyer.com">crobison@ohaganmeyer.com</a> <a href="mailto:jallenza@ohaganmeyer.com">jallenza@ohaganmeyer.com</a> <a href="mailto:ecamacho@ohaganmeyer.com">ecamacho@ohaganmeyer.com</a></p> <p><b>Attorney for Appellants</b></p>	<p>Lizzet Aguilar; Rocio Avila; Guadalupe Rolon; and Salomon Sanchez c/o Juana Escalante <a href="mailto:jescalante@dir.ca.gov">jescalante@dir.ca.gov</a></p> <p><b>Deputy Labor Commissioner</b></p> <p>David L. Bell, Esq. Division of Labor Standards Enforcement 320 W. 4<sup>th</sup> Street, Suite 600 Los Angeles, CA 90013 <a href="mailto:dlbell@dir.ca.gov">dlbell@dir.ca.gov</a></p> <p>Cristina Pena Vasquez, Esq. Division of Labor Standards Enforcement 1515 Clay Street, Suite 801 Oakland, CA 94612 <a href="mailto:cvazquez@dir.ca.gov">cvazquez@dir.ca.gov</a></p> <p><b>Attorneys for the Labor Commissioner</b></p>
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*I certify under penalty of perjury that the foregoing is true and correct.*

Executed on February 16, 2023, at Long Beach, California.

Signature: 

## DEPARTMENT OF INDUSTRIAL RELATIONS

Labor Commissioner's Office  
*Retaliation Complaint Investigation Unit*  
2031 Howe Avenue, Suite 100  
Sacramento, CA 95825  
Phone: (916)263-2991  
Email: retaliation@dir.ca.gov

**WRIT BOND REQUIREMENT OF LABOR CODE § 98.74**

**PLEASE TAKE NOTICE:** As of January 1, 2019, Labor Code § 98.74 requires the posting of a bond with the Labor Commissioner as a condition of filing a writ of mandate in superior court. The bond shall be in the amount equal to the total amount of any back pay, interest, liquidated damages, and penalties that are due and owing.

The total amount due and owing in the Written Decision and Order attached hereto for which a bond is required to be posted with the Labor Commissioner is:

\$ 61,090.80	(Back Pay)
\$ 79,920.00	(Front Pay)
\$ 0.00	(Liquidated Damages)
\$ 40,000.00	(Penalties)
\$ 4,718.69	(Interest)
<b>\$ 185,729.49</b>	<b>(Total)</b>

The bond for the total amount shall either be: (1) a surety bond issued by a surety duly authorized to do business in the State of California, shall be issued in favor of the Labor Commissioner on behalf of the employees named in the Citation, and shall ensure that the Writ Petitioner makes payments as set forth in Labor Code section 98.74; or (2) a cash undertaking in the form of a cashier's check or money order payable to the Labor Commissioner on behalf of the employees named in the Citation.

**The Bond should be sent to:**

98.74 Bond  
State Case Nos. RCI-CM-808459; RCI-CM-808461; RCI-CM-808450; RCI-CM-808467  
Labor Commissioner  
c/o Senior Deputy Wesley Clingman  
31 E. Channel Street, Room 317  
Stockton, CA 95202

If the court issues a decision that affirms an amount equal to or greater than the above total monetary amount, or the writ petition is withdrawn or dismissed without entry of judgment, the full amount of the bond shall be forfeited and the full monetary amount due and owing shall be recoverable from the bond. If the court issues a decision that orders less than the full monetary amount listed above as due and owing, or the parties have executed a settlement agreement for payment of an amount less than the full monetary amount listed above, the Writ Petitioner shall promptly pay the amounts due and owing within 10 days of the date of the written court order or full execution of the settlement agreement and if not, the bond shall be released to the Labor Commissioner in the amount that is due and owing.