

**FILED**  
San Francisco County Superior Court

JUL 27 2020

CLERK OF THE COURT  
BY: \_\_\_\_\_ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

**CHIYOMI BRENT,**

Plaintiff,

v.

**AMAZONFRESH LLC, PRIME NOW  
LLC, AMAZON.COM, INC. and Does 1-50,**

Defendants.

No. CGC-20-584828

**ORDER DENYING PLAINTIFF'S  
APPLICATION FOR PRELIMINARY  
INJUNCTION**

**INTRODUCTION AND PROCEDURAL HISTORY**

Plaintiff Chiyomi Brent is employed as a "picker" at a grocery warehouse operated by Defendants AmazonFresh LLC, Prime Now LLC, and Amazon.com, Inc. (Amazon) and known as the San Francisco Fulfillment Center or Amazon Ultra Fast Fresh (UCA1), located at 888 Tennessee Street, San Francisco. Plaintiff alleges that Amazon has failed during the COVID-19 pandemic to take adequate measures to safeguard employee health and safety in the warehouse, including failing to take adequate measures to sanitize common areas and equipment such as carts

1 and scanners used by pickers and other Amazon employees; failing to sanitize “freezer suits”  
2 used by multiple Amazon employees while working in refrigerator and freezer sections of the  
3 warehouse; and failing to ensure proper social distancing between employees. Before filing this  
4 action, Plaintiff filed complaints with the Division of Occupational Safety and Health of the State  
5 Department of Industrial Relations (Cal/OSHA) and with the City and County of San Francisco,  
6 which referred her complaint to its Community Education Response Team (CERT). On June 11,  
7 2020, Plaintiff filed this action. The first amended complaint, filed on June 26, 2020, alleges that  
8 Amazon’s practices and policies at UCA1 violate numerous provisions of the California Labor  
9 Code and regulations promulgated by Cal-OSHA, as well as state and local shelter-in-place  
10 orders and directives issued by the San Francisco Department of Public Health (SFPDH). The  
11 first amended complaint states causes of action against Amazon for creating a public nuisance  
12 and for violations of the Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, and a  
13 representative claim for civil penalties under the Private Attorneys General Act, Lab. Code §  
14 2698 *et seq.* (PAGA). It seeks damages, declaratory and injunctive relief, and other relief.

15 On July 1, 2020, Plaintiff sought a temporary restraining order and order to show re  
16 preliminary injunction. The application was factually supported by a single declaration, that of the  
17 Plaintiff, regarding her complaints and the shortcomings she had observed at the facility.  
18 Amazon opposed the application, and filed the declaration of Amy Murphy, a Senior Work,  
19 Health and Safety leader, regarding Amazon’s interactions with Plaintiff, its health and safety  
20 policies at UCA1, and the regulatory oversight of Amazon and UCA1 by CERT, SFPDH,  
21 Cal/OSHA, and the California Attorney General.

### 22 **The July 2 Order to Show Cause**

23 On July 2, 2020, after an initial hearing, this Court issued an order to show cause to  
24 Defendants to show cause on July 23, 2020, why a preliminary injunction should not be granted  
25 enjoining Defendants from operating UCA1 until and unless Defendants:

- 26 1. Perform a deep cleaning by professional cleaners of UCA1, and regularly perform  
27 adequate deep cleaning and sanitization;



1           On July 16, 2020, the City and County of San Francisco, acting through CERT and SFPDPH,  
2 provided a lengthy written response to the Court's order, and separately (via an online link)  
3 submitted numerous photographs taken by City inspectors at the UCA1 facility. The City's  
4 response provided valuable information on the San Francisco's Health Officer's COVID-19  
5 business regulations, including the Health Directive applicable to the UCA1 warehouse operation  
6 and orders requiring face coverings; it detailed CERT's April 7 inspection of that facility in  
7 response to Plaintiff Brent's complaint regarding the shared use of freezer suits, which was also  
8 intended to assess the warehouse's overall compliance with the Health Order and its health and  
9 safety requirements; it detailed SFPDPH's regulatory correspondence with Amazon, including a  
10 July 10 Notice of Violation with regard to its social distancing protocol and signage that followed  
11 a July 7 inspection of the facility; and SFPDPH's determination that because there has not been a  
12 positive COVID-19 case at the warehouse, no contact tracing efforts have been required. In  
13 response to the Court's question as to the necessity of injunctive relief, the City responded that  
14 "no injunction is required to compel Amazon Defendants' cooperation with SFPDPH contact  
15 tracing, as there has been no failure to cooperate in that regard. Furthermore, due to the lack of  
16 positive COVID-19 cases associated with 888 Tennessee, San Francisco has no basis to  
17 recommend an injunction to compel a 'deep cleaning' of that location." The City took no  
18 position on whether an injunction was required to compel Amazon to comply with physical  
19 distancing requirements and with face covering requirements; and it indicated that it expected  
20 Amazon to follow through on its assurances that it would implement protocols to ensure that  
21 freezer suits are not re-used without being cleaned, but if not, an injunction requiring it to do so  
22 would be warranted.

23           On July 22, 2020, the City provided a further submission. In that submission, the City  
24 indicated that SFPDPH had conducted a second site visit on July 16 and abated the Notice of  
25 Violation after finding the facility in compliance with its directions to update the facility's social  
26 distancing protocol and place appropriate COVID-19 safety posters at an entrance that lacked  
27 them. The City's submission also indicated that the SFPDPH inspector had walked through the  
28 facility and found that it complied with numerous items that were marked as "TBD" (to be

1 determined) on the checklist portion of the July 10 Notice of Violation. Those matters  
2 encompassed the following areas: signage and education (specifically, “Educate Personnel about  
3 this Protocol and other COVID-19 related items”); protective measures (including “Require  
4 Personnel and patrons to wear a face covering as required by Health Officer orders” and  
5 “Implement a plan to keep site Personnel safe, including by limiting the number of Peronnel and  
6 customers onsite to a number that ensures physical distancing and favoring allowing Personnel to  
7 carry out their duties from home when possible”); measures to prevent unnecessary contact  
8 (including “Tell Personnel and patrons to maintain physical distancing of at least six feet, except  
9 Personnel may momentarily come closer when necessary to accept payment, deliver goods or  
10 services, or as otherwise necessary”); sanitizing measures (including “Regularly disinfect high  
11 touch areas” and “Disinfect break rooms, bathrooms, and other common areas frequently”); and  
12 the facility’s compliance with industry-specific directives.

13 Cal/OSHA’s response, dated July 22, indicated that it had not received Plaintiff’s May 22  
14 complaint at the time it was submitted, but that once it learned of Plaintiff’s concerns, its San  
15 Francisco enforcement office opened an investigation. Cal/OSHA indicated that its enforcement  
16 staff visited the UCA1 warehouse on July 14, and that its investigation is not yet complete.  
17 Cal/OSHA stated that its enforcement staff had not yet begun interviewing non-managerial  
18 employees, and that it intends to request further documentation from the employer. Accordingly,  
19 it cannot yet evaluate the current policies and procedures at the warehouse or determine whether  
20 they are adequately understood, followed, and enforced, nor could it take a position on the need  
21 for injunctive relief. Cal/OSHA’s response also provided helpful background information  
22 regarding its regulatory guidelines and other oversight in relation to COVID-19 and to the  
23 warehouse industry sector, including guidance requiring California employers to establish and  
24 implement an injury and illness prevention plan (IIP) to protect employees from workplace  
25 hazards, including infectious diseases. Cal/OSHA also confirmed that it, like Amazon, is not  
26 aware of any known or suspected COVID-19 infections at the facility.

27 Finally, the Attorney General confirmed that on May 11, 2020, he had requested Amazon in  
28 writing to provide detailed information and documents relating to its policies and practices

1 regarding the protection of its workforce from COVID-19 at its facilities in California, and had  
2 received an initial response from Amazon on June 12. However, the Attorney General indicated  
3 that Amazon's response did not specifically reference the UCA1 facility or provide any  
4 documents particular to it. Accordingly, the Attorney General indicated that he had not made any  
5 determination specific to that facility, and lacks sufficient information to offer his opinion  
6 regarding the propriety of injunctive relief.

### 7 **The Parties' Further Factual Submissions**

8 On July 16, 2020, with leave of court, both parties filed further factual submissions relating  
9 to Plaintiff's request for a preliminary injunction. In her further declaration, Plaintiff asserted that  
10 as of early July, Amazon had not fully complied with its assurances that freezer suits will be  
11 cleaned and disinfected after each use. She acknowledges that on three days when she worked at  
12 the facility, she saw signage directing workers to place dirty suits in the hamper or dry-cleaning  
13 bags ["Freezer Suits are picked up by our Dry Cleaning Vendor. Please place dirty suits in the  
14 hamper or dry-cleaning bags below, thank you!"]; however, she asserted that Amazon did not  
15 specifically inform workers that the freezer suits were to be used only once before cleaning, and  
16 that on one day (July 4), there were no bins for soiled freezer suits. (Brent Decl. ¶¶ 3-6.) She  
17 also asserted that Amazon did not provide her with updated information regarding masks,  
18 cleaning carts, or social distancing (*id.* ¶ 7); that carts and scanners did not appear to have been  
19 cleaned between each use (*id.* ¶ 8); that on two of the days, employees did not abide by social  
20 distancing (*id.* ¶ 9); that she did not observe any employee monitoring or enforcing social  
21 distancing (*id.*); and that employees failed to wear their face masks correctly and she did not  
22 observe anyone monitoring or enforcing the use of face masks. (*Id.* ¶ 10.)

23 Amazon, for its part, filed a lengthy declaration by Tim Coleman, the acting Site Lead at  
24 the UCA1 facility. That declaration details the policies and procedures that Amazon has taken at  
25 the facility to address the various issues raised by Plaintiff, and attaches numerous color  
26 photographs of that facility, including of signage regarding social distancing and other  
27 requirements. Those measures include contracting with a janitorial services provider to provide  
28 daily cleaning and disinfecting services every day, and with another vendor to provide nightly

1 disinfectant spraying services;<sup>3</sup> maintaining safe physical distances between workers with policies  
2 that are advertised throughout the worksite and enforced by employees (“Social Distancing  
3 Heroes”) whose sole job is to patrol the facility to detect and address policy violations; providing  
4 free facial coverings to workers and requiring their use at all times, except when eating or  
5 drinking at socially distanced tables in the breakroom; and adopting and publicizing detailed  
6 policies and protocols regarding the regular and proper cleaning and disinfection of shared  
7 equipment (including freezer suits and baskets).<sup>4</sup>

### 8 9 DISCUSSION

10 The Court undoubtedly has the authority to grant an injunction to abate a public nuisance.  
11 (See Civ. Code § 3491.) Moreover, there is no gainsaying the gravity of the COVID-19  
12 pandemic or of the issues raised by Plaintiff, both in terms of worker safety and public health and  
13 safety generally. This Court takes seriously its obligations in that context. All that said, however,  
14 the Court concludes this is not an appropriate case for issuance of a preliminary injunction. That  
15 is so for at least three principal reasons.

16 *First*, Plaintiff’s application does not seek “preliminary injunctive relief to preserve the  
17 status quo pending a final judgment,” which is the usual function of such relief. (*Sanchez v.*  
18 *Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 922.) Rather, as Plaintiff’s counsel  
19 acknowledged at the hearing, Plaintiff seeks a mandatory injunction that would compel Amazon,  
20 among other things, to “regularly perform adequate deep cleaning and sanitization,” “[m]ake  
21 possible and enforceable reasonably safe physical distancing of at least six feet between workers  
22 in work areas, “[m]onitor and enforce proper use of face coverings,” “[d]evelop a protocol for,

23 <sup>3</sup> Amazon’s counsel represented at the hearing that the facility operates 24 hours a day.

24 <sup>4</sup> At the hearing, Plaintiff’s counsel sought leave to further supplement the record with  
25 declarations from other Amazon employees regarding conditions at the UCA1 warehouse.  
26 Representing that Amazon employees are reluctant to come forward for fear of retaliation,  
27 counsel requested that the Court permit such declarations to be filed anonymously or under to a  
28 protective order limiting disclosure of the declarants’ identities to outside counsel to the parties.  
The request is denied. The Court notes that employees may submit complaints to Cal/OSHA on a  
confidential basis, and that Plaintiff herself does not claim that she has been retaliated against  
because of her role in submitting such complaints or in bringing this action.

1 instruct managers and employees on, and regularly conduct sufficient and proper cleaning and  
2 disinfection of equipment.” (See *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th  
3 438, 446 [“an injunction is prohibitory if it requires a person to refrain from a particular act and  
4 mandatory if it compels performance of an affirmative act that changes the position of the  
5 parties.”].) Such a preliminary mandatory injunction is “rarely granted.” (*People ex rel. Herrera*  
6 *v. Stender* (2012) 212 Cal.App.4th 614, 630.) “The granting of a mandatory injunction pending  
7 trial ‘is not permitted except in extreme cases where the right thereto is clearly established.’”  
8 (*Id.*; see also *Brown v. Pacifica Foundation, Inc.* (2019) 34 Cal.App.5th 915, 925; *Teachers Ins.*  
9 *& Annuity Ass’n v. Furloff* (1999) 70 Cal.App.4th 1487, 1493.)

10 Here, the Court cannot find that the right to a mandatory injunction is “clearly established.”  
11 The factual record, while complex and disputed, does not clearly establish the existence of  
12 ongoing serious regulatory violations that pose an imminent risk of irreparable harm to Amazon  
13 employees or the public. To the contrary, the San Francisco Department of Public Health, which  
14 most recently inspected the facility just 11 days ago on July 16, found no current violations.  
15 Further, as Amazon’s counsel observed at the hearing, it is a fair reading of the record that  
16 Amazon—like countless other employers and institutions, private and public—has improved its  
17 practices and policies over time as it attempts to react to a fast-moving and unprecedented global  
18 health crisis, and to evolving regulatory requirements. (See, e.g., Coleman Decl. ¶ 28 [discussing  
19 implementation in late April of targeted airborne disinfectant application]; *id.* ¶ 35 [discussing  
20 issuance on June 19 of new freezer PPE management guidelines]; *id.* ¶ 38 [recent posting of  
21 additional signs regarding freezer PPE policy].) Amazon doubtless could still further improve its  
22 health and safety practices. And, at least with the benefit of hindsight, it arguably could have  
23 done a better or swifter job in the past of developing and implementing those practices. But  
24 perfection is not the standard.

25 *Second*, the Court is particularly disinclined to grant mandatory injunctive relief because  
26 the relief Plaintiff requests would require continuing judicial oversight and supervision that the  
27 Court is ill-equipped to provide. As the Court observed at both hearings in this matter, a judge is  
28 not an expert in public health matters, and lacks the training, expertise, and resources to oversee



1 compliance with an injunction such as the one Plaintiff seeks here. It is no answer to suggest, as  
2 Plaintiff’s counsel asserted at the hearing, that the Court need only order Amazon to “comply  
3 with the law.” How is the Court to ascertain what is “adequate deep cleaning and sanitization”  
4 and how often it should be performed? Or to determine what is “sufficient and proper cleaning  
5 and disinfection of equipment,” or to assess the adequacy of any protocol that Amazon might be  
6 ordered to develop on those subjects? How long would such an injunction need to remain in  
7 effect? The requested relief begs all these questions and more.

8 *Third*, and closely related, there are responsible administrative and law enforcement  
9 agencies that *do* have the technical expertise to oversee Amazon’s compliance with the various  
10 state and local regulatory provisions governing its response to the COVID-19 pandemic, and the  
11 authority to take effective enforcement action if its efforts fall short of those required to protect  
12 employee and public health. Under the circumstances, two related doctrines—those of judicial  
13 abstention and primary jurisdiction—support the conclusion that the preferable approach here is  
14 for the Court to defer to those agencies’ expertise and authority.<sup>5</sup> Likewise, a mandatory  
15 injunction is properly refused where, as here, an alternative remedy is available to the moving  
16 party. (See *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633-634 [trial court  
17 abused its discretion in issuing mandatory preliminary injunction compelling county hospital to  
18 reinstate doctor to administrative positions, where doctor could pursue reinstatement through  
19 administrative procedures].)

20 “As a general matter, a trial court may abstain from adjudicating a suit that seeks equitable  
21 remedies if ‘granting the requested relief would require a trial court to assume the functions of an  
22 administrative agency, or to interfere with the functions of an administrative agency.’” (*Arce v.*  
23 *Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 496.) In addition, and of  
24 particular pertinence here, “judicial abstention may be appropriate in cases where ‘granting  
25 injunctive relief would be unnecessarily burdensome for the trial court to monitor and enforce  
26 given the availability of more effective means of redress.’” (*Id.*) Thus, in *Alvarado v. Selma*

27 <sup>5</sup> The requirement that a plaintiff exhaust her administrative remedies as a condition  
28 precedent to judicial relief, while based in similar concerns, is distinct from these doctrines.

1 *Convalescent Hospital* (2007) 153 Cal.App.4th 1292, plaintiffs filed a class action seeking  
2 injunctive relief to require the owners and operators of skilled nursing and intermediate care  
3 facilities to comply with certain nursing hour requirements set forth in the Health and Safety  
4 Code. The court held that the trial court properly sustained defendants’ demurrer without leave to  
5 amend on the basis of the judicial abstention doctrine, since granting injunctive relief “would  
6 place a tremendous burden on the trial court to undertake a classwide regulatory function and  
7 manage a long-term monitoring process to ensure compliance” with the statute. (*Id.* at 1296; see  
8 also *Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 152 [in  
9 action against professional medical corporation and related entities for operating as a health care  
10 service plan without obtaining the required regulatory license, trial court properly abstained,  
11 where court would be required to determine complex economic policy within the context of the  
12 managed health care system, a task properly left to the responsible administrative agency].)

13 The primary jurisdiction doctrine is grounded in similar concerns. That doctrine “applies  
14 where a claim is originally cognizable in the courts, and comes into play whenever enforcement  
15 of the claim requires the resolution of issues which, under a regulatory scheme, have been placed  
16 within the special competence of an administrative body; in such a case the judicial process is  
17 suspended pending referral of such issues to the administrative body for its views.” (*Farmers Ins.*  
18 *Exchange v. Superior Court* (1992) 2 Cal.4th 377, 390-391.) “The doctrine does not permanently  
19 foreclose judicial action, but provides the appropriate administrative agency with an opportunity  
20 to act if it chooses to do so.” (*Wise v. Pacific Gas & Electric Co.* (2000) 77 Cal.App.4th 287,  
21 296.) “Administrative agency involvement may serve to resolve factual issues or provide a  
22 record for subsequent judicial review. [Citation.] In addition, a stay will conserve judicial and  
23 other resources which otherwise would be consumed in litigation of issues that may be resolved  
24 by the administrative proceeding.” (*Id.*) The primary jurisdiction doctrine “advances two related  
25 policies: it enhances court decisionmaking and efficiency by allowing courts to take advantage of  
26  
27  
28

1 administrative expertise, and it helps assure uniform application of regulatory laws.” (*Farmers*  
2 *Ins. Exchange*, 2 Cal.4th at 390.)<sup>6</sup>

3 Here, the public agencies’ submissions do not establish that there is a need at this time for  
4 this Court to grant extraordinary injunctive relief. To the contrary, they support the conclusion  
5 that agencies that, unlike the Court, have the specialized expertise to assess and oversee  
6 Amazon’s compliance with applicable (and ever-changing) public health directives, are doing  
7 their job, and appear to be doing so vigorously and responsibly. The Attorney General,  
8 Cal/OSHA, and the San Francisco Department of Public Health have all opened investigations  
9 into Amazon’s practices, and both Cal/OSHA and SFDPH have inspected Amazon’s UCA1  
10 warehouse within the last two weeks. Moreover, those agencies have the ability and apparent will  
11 to exercise robust enforcement authority if they determine that Amazon is not complying with its  
12 obligations. Indeed, the City gave Amazon only 48 hours to comply with its July 10, 2020 Notice  
13 of Violation, and stated that the City considers any violation of its public health directives to  
14 constitute a public nuisance as defined in the San Francisco Health Code. The Notice of  
15 Violation warned Amazon that if it failed to comply with the Notice of Violation, the Director of  
16 Public Health may cause the abatement and removal of the nuisance, even to the extent of  
17 ordering closure of the business. (July 16, 2020 letter brief from Deputy City Attorney Peter J.  
18 Keith, Ex. F (July 10, 2020 Notice of Violation and Inspection Report).)<sup>7</sup> Likewise, Cal/OSHA  
19 and the Attorney General have authority to take enforcement action if they determine that an  
20 employer has violated the Labor Code or applicable regulations, including the authority to

21 <sup>6</sup> The two doctrines result in different outcomes. A court may dismiss a cause of action  
22 based on the doctrine of judicial abstention. (*Arce*, 181 Cal.App.4th at 482.) In applying the  
23 primary jurisdiction doctrine, in contrast, “the proper procedure is to stay the action pending  
24 resolution of the issues within the administrative body’s expertise.” (*Wise*, 77 Cal.App.4th at  
25 296.) Here, Amazon has not sought either dismissal or a stay of the action, and the Court does  
not find that either doctrine necessarily applies by its terms. Rather, the Court looks to the  
considerations underlying those doctrines to inform its consideration of Plaintiff’s request for  
injunctive relief.

26 <sup>7</sup> The Notice of Violation specifically refers to Section 581(b)(17) of the San Francisco  
27 Health Code, which broadly defines prohibited public health nuisances to include “[a]nything else  
28 that the Director [of Public Health] deems to be a threat to public health and safety.” Section  
596(f) of the same Code authorizes the Director, if the nuisance is not abated and removed within  
the time period set forth in the notice, to “abate and remove the nuisance as soon as practicable.”

1 prohibit use of or entry into a place of employment if Cal/OSHA determines that it presents an  
2 “imminent hazard to employees.” (Lab. Code § 6325; see generally *Sacramento County Deputy*  
3 *Sheriffs’ Assn. v. County of Sacramento* (1990) 220 Cal.App.3d 280, 285 [describing  
4 Cal/OSHA’s power and jurisdiction to enforce and administer laws, standards, and orders  
5 requiring the protection of employees’ health and safety].)


6 In short, the investigatory, inspection and enforcement efforts of these public health and  
7 law enforcement agencies, and the availability of effective relief if they determine that Amazon  
8 has failed to comply with applicable local or state law or regulations, supports the Court’s  
9 determination that judicial intervention by way of extraordinary injunctive relief is not warranted  
10 at this time. (See *Hambrick*, 238 Cal.App.4th at 154 [abstention appropriate where the  
11 administrative agency “both has the power to enforce the [statute], and has repeatedly issued  
12 cease and desist orders that require health care service plans to obtain the required licenses, enjoin  
13 deceptive and misleading business practices and advertising, and order restitution,” thereby  
14 ensuring that plaintiff will have a remedy for her claims]; *Alvarado*, 153 Cal.App.4th at 1306  
15 [“The DHS has the power, expertise, and statutory mandate to regulate and enforce [the statute].  
16 Given this alternative and more effective means of ensuring compliance with [the statute], we  
17 conclude the trial court did not abuse its discretion by applying the abstention doctrine.”].)

18  
19  
20 **CONCLUSION**

21 For the foregoing reasons, Plaintiff’s request for a preliminary injunction is denied.

22  
23 **IT IS SO ORDERED.**

24 Dated: July 27, 2020

25   
26 HON. ETHAN P. SCHULMAN  
27 JUDGE OF THE SUPERIOR COURT  
28

**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

I, M. Goodman, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On 7/27/20, I electronically served the ORDER DENYING PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTION via electronic mail on the recipients.

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Dated: July 27, 2020

T. Michael Yuen, Clerk

By: \_\_\_\_\_

  
M. Goodman, Deputy Clerk