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Commentary

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[Editor's Note: The authors are attorneys at the law firm of Shook, Hardy & Bacon LLP, which represents manufacturers of pharmaceutical and nicotine-containing products on an ongoing basis. Although Shook, Hardy & Bacon LLP has represented firearms manufacturers in the historical public nuisance litigation filed by various state and local governments and represents the firearms industry in a lawsuit challenging the NY public nuisance law, the opinions in this article are solely those of the authors and do not represent the viewpoints of any clients of the firm. Any commentary or opinions do not reflect the opinions of Shook, Hardy & Bacon LLP or LexisNexis®, Mealey Publications™. Copyright © 2022 by Stacey Deere, Edd Gaus, and EJ Odigwe. Responses are welcome.]

For decades, plaintiffs' lawyers, local governments, and advocacy groups have tried to use public nuisance litigation as a tool to force businesses and industries to pay for alleged harms stemming from widespread public health crises or coerce changes to otherwise lawful business practices (regulation through litigation). The COVID-19 pandemic is no different. As the virus rapidly spread throughout the country, these groups set their sights on segments of the economy particularly vulnerable to the disruption caused by the outbreak of an infectious and ever-changing disease. Unfortunately, these cases represent the continuation of a larger, more concerning transformation of traditional public nuisance litigation into a powerful weapon for plaintiffs' counsel and public advocacy groups. Moreover, it is likely that these claims will not vanish as COVID-19 dissipates. As the American economy recovers, businesses across the country should learn from the successes—and failures—of past public nuisance litigation to prepare themselves for similar claims in the future.

Foundations of Public Nuisance Law

Under traditional tort principles, a defendant can only be liable if there is a causal connection between a party's conduct and harm resulting from such conduct. Yet, plaintiffs' lawyers continue to evade this basic principle through the use of public nuisance litigation. These lawsuits can impose millions—sometimes billions—of dollars in liability, regardless of fault, causation, whether the legal elements of the tort claim are proven, or whether liability will even fix the problem. Public nuisance was never intended to be used this way, and this represents a stark deviation from the original intent of the theory.

When American courts adopted English common law, public nuisance theory was narrowly focused on non-trespassing invasions on the use and enjoyment of public lands.[1] These actions allowed local governments to prevent individuals from unlawfully interfering with a public right, such as the right to use a public road, local park, or waterway within the government's jurisdiction.[2] Other public nuisance claims included an individual's use of land for an unlawful or immoral purpose, such as the use of their property for drug dealing, gambling, or prostitution.[3] Under this

paradigm, public nuisance litigation was centered on four key concepts.[4] First, a public nuisance lawsuit had to defend a right that belonged to the public. Second, the public nuisance referred to the condition (or situation) blocking or interfering with the public right. Third, liability was established by proving that one was engaged in an *unlawful* activity that caused the public nuisance. Lastly, only the individual unlawfully causing, or in control of, the public nuisance was responsible; not the companies that made the products used to create the nuisance. Simply, public nuisance was not meant to encompass lawful economic activity. This was the prevailing norm until the 1990s, when plaintiffs' attorneys and local governments began to assert new theories of public nuisance—some of which were adopted by courts—in the pursuit of substantial monetary damages.

Public Nuisance Lawsuits in the 1990s-2010s

Lead Paint Litigation

In the late 1990s, local and state governments sued several manufacturers of lead paint, seeking the costs of abating lead paint in private homes built before the 1950s. After years of litigation, a California court awarded abatement costs against three companies without any proof that these companies manufactured the paint used in any of the affected homes.[5] On appeal, the California appellate court identified a "collective social interest" in the safety of children in residential housing and held that residential lead paint interfered with the community's "public right" to housing that is safe for children.[6] This holding expanded the definition of a "public right" to encompass almost any social ill or dilemma affecting a large number of people. Consequently, this expanded definition of "public right" emboldened plaintiffs' counsel to file additional nuisance claims against lead paint manufacturers.

Yet, similar claims against the lead paint industry had already encountered skepticism in other jurisdictions. In New Jersey, municipalities and counties filed suit for the costs of detecting and removing lead paint from homes and buildings and providing medical care to residents affected with lead poisoning.[7] The New Jersey court dismissed the action, ruling that the manufacturers' acts (i.e., the manufacture and sale of lead paint) were governed exclusively by product liability theories and the manufacturers lacked control over where the lead paint was used.[8] On appeal, the New Jersey Supreme Court refused to find liability for "merely offering an everyday household product for sale" because doing so would "far exceed any cognizable cause of action."[9] Subsequently, the Rhode Island Supreme Court dismissed a similar claim, holding that despite the seriousness of the problem of lead poisoning, "public nuisance law simply does not provide a remedy for this harm."[10] These holdings correctly recognized the utter lack of a connection between the conduct and subsequent harm, along with the potential danger of expanding public nuisance law into the realm of tort theories.

But recent proposed legislation could open the door for renewed litigation against the lead paint industry. New Jersey Senate Bill 697 would allow common law public nuisance lawsuits under state law and would exempt the attorney general from certain elements of a public nuisance claim when pursuing a public nuisance lead paint claim.[11] Specifically, the attorney general "would not be required to demonstrate that a Defendant physically controls lead paint, or real property which contains lead paint to prevail on a public nuisance claim based on the distribution of lead paint, nor demonstrate a special injury in order to prevail in those actions."[12]

Firearm Litigation

In the 1990s and early 2000s, plaintiffs' counsel, advocacy groups and municipalities turned their attention to a new potential public nuisance target—the firearms industry. In *Ganim v. Smith & Wesson Corp.,* a Connecticut municipality brought a public nuisance claim against several firearm manufacturers, alleging that the manufacturers were responsible for the city's increased costs of law enforcement, implementing social service programs, and treating the victims of crime.[13] The municipality sought to hold certain members of the industry liable for the unfortunate outcomes associated with criminal misuse of firearms, despite the myriad other factors that contribute to crime. Recognizing the weaknesses in the claim, the Connecticut Supreme Court held that a "chain of causation as lengthy and multifaceted" as the one alleged by the municipality could not sustain a public nuisance claim.[14] Similarly, in *Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp.*, Camden County (NJ) alleged that a manufacturer's distribution plan created an illegal, secondary market that allowed criminals to access firearms, which, in turn,

endangered public safety and "imposed inordinate financial burdens on the [County]."[15] The Third Circuit affirmed the dismissal, holding that the manufacturer lacked "sufficient control" to abate the alleged nuisance once the firearms entered the marketplace.[16] Further, when the National Association for the Advancement of Colored People (NAACP) sued several handgun manufacturers, importers, and distributors, the Eastern District of New York dismissed the suit due to standing[17] and found that "[t]he probability of being exposed to violent criminality involving handguns is so much a product of the incredibly complex skein of family and friends, neighborhood and socioeconomic status, and expectations and luck…"[18] Moreover, in *City of Chicago v. Beretta U.S.A. Corp.*, the Illinois Supreme Court held that such claims do not implicate a "public right" because the individual right "to be free from the threat that members of the public may commit crimes against individuals" is not the kind of right addressed by public nuisance law.[19]

Following the many public nuisance claims in the 1990s and early 2000s, Congress eventually stepped in to quell the onslaught of municipal litigation facing the firearms industry. In 2005, the Protection of Lawful Commerce in Arms Act (PLCAA) was passed to prohibit "qualified civil liability actions" against firearms manufacturers and clarified that such lawsuits are unfounded. Practically, the PLCAA should have squelched future public nuisance actions against the industry. However, neither decisions like *Ganim*, *Camden County*, and *Acusport* nor the PLCAA have discouraged other public nuisance claims against firearm manufacturers. Indeed, in August 2021, a foreign government—the Mexican national government—filed suit against firearm manufacturers and a distributor alleging that the defendant manufacturers have affected the "peace, tranquility, and economic well-being of the Mexican public."[20]

Furthermore, due to recent legislation in New York and similar proposed legislation in California, public nuisance claims remain a real concern for the firearms industry.[21] New Jersey has also proposed legislation—similar to that related to the lead paint industry—that would allow the attorney general to bring certain public nuisance actions arising from the sale and marketing of firearms.[22] If passed, future public nuisance actions against members of the firearms industry in these states are almost certain.

Opioid Litigation

In the last few years, state and local governments have also filed claims against certain pharmaceutical manufacturers seeking to recoup the public costs related to the treatment of opioid addiction. Generally, these claims allege manufacturers engaged in misleading marketing practices, failed to adopt voluntary duties, and/or violated reporting and regulatory requirements. The most widely publicized of these claims originated in Oklahoma, where the state attorney general filed a public nuisance action against several manufacturers and distributors of opioids, seeking to recover the costs associated with combating widespread opioid use.[23] As trial approached, some defendants opted to settle rather than litigate the matter.[24] But other manufacturers chose to take the case to trial. After a lengthy bench trial spanning seven weeks, the Oklahoma court imposed a $572 million judgment, the estimated cost of one year of Oklahoma's Abatement Plan.[25] (This amount was later reduced to $465 million after the court admitted to a calculation error).[26] The court ruled that the manufacturers' "misleading marketing and promotion" of opioids was the kind of act (or omission) capable of sustaining liability under Oklahoma's nuisance law.[27]

Notably, the Oklahoma Supreme Court overturned this judgment, holding that the trial court's "expansion of public nuisance law went too far."[28] The Supreme Court held that Oklahoma's public nuisance statutes are appropriate for "unlawful conduct" such as "criminal and property-based conflict" that negatively affects the health and safety of others.[29] And as such, applying the nuisance statutes to lawful products "would create unlimited and unprincipled liability for product manufacturers," which is why nuisance statutes have "never applied . . . to the manufacturing, marketing, and selling of lawful products."[30] Although the Oklahoma judgment was overturned, many other cases remain pending across the country.

Vaping Litigation

Recently, the e-cigarette industry has emerged as a popular target for litigation, including public nuisance. In October 2019, King County, located in the State of Washington, filed a class action claiming that e-cigarette manufacturers created a public nuisance by marketing and selling their products in a manner that encouraged use by minors.[31] The complaint alleged

that youth vaping has "completely changed school bathrooms"[32] and interferes with the "comfortable enjoyment of life and property of the entire communities of King County and Washington State at large."[33] To establish the "public right" element of their public nuisance claim, the complaint cited the "health and safety" of youth as matters of "substantial public interest" and "legitimate concern" to the King County and Washington State communities.[34] Yet, the complaint did not assert any unlawful conduct. To circumvent this glaring omission, the complaint parroted arguments used in the Oklahoma opioid litigation and cited Washington's vague public nuisance statute applying it to "whatever is injurious to health."[35] Plaintiffs contend that the social harms of vaping were "reasonably foreseeable"[36] and e-cigarette manufacturers should be liable for all harm and costs resulting from illegal vaping use. School districts near New York City, Kansas City, and St. Louis[37] and state attorney generals from North Carolina, California, and New York[38] are utilizing the same reasoning to pursue public nuisance claims, similarly accusing e-cigarette manufacturers of intentionally targeting teenagers and creating a public nuisance with the alleged health problems related to vaping. As the public health community continues to study vaping and its potential impact on health, plaintiffs' counsel will continue to look to public nuisance as a means to target this growing industry.

COVID-19 Public Nuisance Litigation

As businesses struggled with the best way to continue operations in the midst of the pandemic, plaintiffs' counsel quickly pounced, bringing public nuisance actions against a variety of businesses throughout the country. For example, employees at a Smithfield Foods meat processing plant, alleging a failure to provide safe working conditions during the early stages of the pandemic, brought one of the first COVID-19 public nuisance claims.[39] The plaintiffs argued that employees, their family members, and the surrounding community suffered an increased risk of contracting COVID-19 due to Smithfield's workplace policies, but did not allege anyone actually contracted the virus.[40] After initial briefing, the court dismissed the case, ruling that Smithfield's workplace guidelines and regulations fell within the jurisdictions of the Occupational Safety and Health Administration (OSHA) and the U.S. Department of Agriculture (USDA).[41] More importantly, the court ruled that injunctive relief was not appropriate because "no essential-business employer can completely eliminate the risk that COVID-19 will spread to its employees through the workplace."[42] Since Smithfield Foods had taken "meaningful, good faith attempts to reduce the risk," an injunction was not in the public interest.[43] Similarly, a lawsuit against Amazon related to conditions at a New York distribution facility was dismissed, in part, because the court determined the issue was best determined by OSHA instead of the federal courts.[44] The court further noted that unlike "the noxious landfill, a malarial pond, or a pigsty," the Amazon distribution center at issue was not the source of COVID-19 and the plaintiffs, along with the general public, could have been exposed to COVID-19 "nearly anywhere in this country and the world."[45]

Meanwhile, other public nuisance claims were not so easily dismissed. In *Massey v. McDonald's Corp.*, filed in May 2020, five workers, along with a few of their family members, sought declaratory and injunctive relief against McDonald's and several Chicago-area franchises, alleging that their working conditions during the pandemic created a public nuisance.[46] The employees claimed that McDonald's had "a responsibility to ensure that the restaurants do not become a hub for spread of the virus" and that the "disregard of expert recommendations and government guidance" constituted a public nuisance.[47] The court granted the injunctive relief, finding that the defendants had failed to provide accurate information concerning proper social distancing and to enforce a mask-wearing policy for employees and customers. The court determined that these two failures, when considered together, created a substantial and unreasonable interference with a public right by increasing the "health risk for employees, their families, and the public as a whole." Further, the court concluded that "there exists a public right to be free from an environment that may endanger public health" and that the "possibility of an infection at the stores and injury that would follow [were] 'highly probable."[48] Whereas Smithfield Foods avoided an injunction due to the implementation of safety measures, the defendants in *Massey* could not. The *Massey* court expressed concern with the lack of proper sanitation and safety standards to prevent the spread of COVID-19 and approved an injunction requiring the defendants to address those issues. As shown by *Massey*, under the right circumstances, plaintiffs have found success asserting COVID-19-related public nuisance claims.

While the *Smithfield Foods* and *Massey* decisions received a good deal of publicity, they were merely the tip of the iceberg. Throughout the nation, similar claims were filed against a variety of entities, including retirement communities, gyms, and even local governments for allegedly failing to implement polices to prevent the spread of the SARS-CoV-2 virus.[49] As healthcare professionals and industries continue to adjust their strategies to mitigate transmission of the virus, businesses should anticipate potential public nuisance litigation related to future COVID-19 issues and other public health concerns.

Future of Public Nuisance Litigation

Although many courts reject distortions of public nuisance law, the astronomical damages awarded in successful cases have provided an incentive for plaintiffs' counsel to continue their attempts to misapply public nuisance law. Indeed, after decades of trial and error, the plaintiff's playbook for a successful public nuisance claim has become clear: (1) identify an issue that affects many Americans, (2) identify large corporations and businesses within the industry, (3) file a public nuisance claim for the "indirect harm" caused by the corporations, and (4) muster sufficient political and public pressure to force a settlement or encourage judicial activism. With this playbook, and the experiences gained from prior litigation, including claims that arose during the COVID-19 pandemic, plaintiffs' counsel may consider other industries for new public nuisance claims.

For example, an overwhelming majority of Americans rely on social media to stay in touch with modern life. However, critics have recently raised questions concerning potential harm related to over-exposure to social media platforms—especially among adolescents. Online harassment and low self-esteem among teenagers and young adults are allegedly connected to the increase in social media use. But given that social media use is a relatively new phenomenon, the true effects of widespread use remain largely unknown.[50] As experts continue to examine whether there exists any connection between social media use and mental health issues, creative plaintiffs' counsel could look to public nuisance as a potentially profitable avenue. This possibility increases exponentially if plaintiffs' counsel are able to somehow connect the conduct of social media companies or the impact of over-exposure to social media with any increased burden imposed on municipal and/or state governments. Arguably, such a claim would be meritless due to the measures that have been taken by numerous social media companies to provide a safe and inclusive environment for their uses. Nonetheless, as public awareness of the alleged impacts surrounding social media becomes more widespread, the public's appetite to hold social media companies responsible may begin to increase.

Further, the legalization of the recreational use of cannabis in many states has led to emergence and growth of an entirely new industry. As more Americans consume legal cannabis, the health risks associated with excessive use remain largely unknown. But should medical studies emerge alleging a causal connection between cannabis consumption and possible health risks, the industry could face public nuisance claims mirroring those brought against other industries. And if state and local governments find themselves burdened with increased costs associated with widespread cannabis use, plaintiffs' counsel may use the improper legal theories applied in past public nuisance litigation as a template for future claims against the industry. Indeed, as the momentum towards legalization continues to build, larger, more established corporations could look to expand into this rapidly emerging industry. This increased investment by such companies into cannabis-related ventures could encourage plaintiffs' counsel to bring misguided public nuisance claims against the industry. As the medical community awaits a "full" green light to research the health effects associated with cannabis use, the cannabis industry should pay close attention and prepare an action plan to avoid improper liability for potential public nuisance claims.

Conclusion

The COVID-19 pandemic forced Americans across the country to adapt to new restrictions in the post-pandemic world. American businesses faced unparalleled challenges over the last year, including the re-emergence of a dangerous legal threat—public nuisance litigation. Because public nuisance claims have been viable, and in some cases highly profitable, the public nuisance suits above are certainly not the end of the story. As the nation moves past the pandemic, businesses and industries—both old and new—should anticipate and prepare for public nuisance litigation.

Endnotes

1. *See* Victor E. Schwartz and Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 Washburn L.J. 541, 545 (2006).

2. *See* American Tort Reform Association (ATRA), The Plaintiffs' Lawyer Quest for the Holy Grail: The Public Nuisance "Super Tort" (2020) at 2; *see also* Schwartz at 545-46.

3. *See* Swartz at 545 (citing Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 801 (2003)).

4. American Tort Reform Association at 2.

5. *See People v. Atlantic Richfield Co.*, No. 100CV788657, 2014 WL 1385823, at *44 (Cal. Super. Ct. Mar. 26, 2014).

6. *See People v. ConAgra Grocery Products*, 227 Cal. Rptr. 3d 499, 552 (Ct. App. 2017).

7. *In re Lead Paint Litig.*, 924 A.2d 484, 486-87 (N.J. 2007).

8. *Id.* at 488.

9. *Id.* at 501.

10. State v. Lead Indus. Ass'n, Inc., 951 A.2d 428, 435 (R.I. 2008)

11. New Jersey Senate Bill No. 697, New Jersey Two Hundred Nineteenth Legislature, Second Annual Session, 2020.

12. *Id.*

13. *Ganim v. Smith & Wesson Corp.*, 780 A.2d 98, 113-115 (Conn. 2001).

14. *Id.* at 132-33.

15. *Id.* at 538-39.

16. *Camden County Board of Chosen Freeholders v. Beretta U.S.A. Corp.*, 273 F.3d 536, 541 (3d. Cir. 2001) ("Even if public nuisance law could be stretched far enough to encompass the lawful distribution of lawful products, the County has failed to allege that the manufacturers exercise sufficient control over the source of the interference with the public right. . . . A public-nuisance defendant can bring its own conduct or activities at a particular physical site under control. But the limited ability of a defendant to exercise control beyond its sphere of immediate activity may explain why public nuisance law has traditionally been confined to real property and violations of human rights.").

17. *See National Association for the Advancement of Colored People v. Acusport, Inc.*, 271 F.Supp.2d 435, 456 (E.D.N.Y. 2003). The Eastern District of New York held that the NAACP lacked standing to sue because they could not establish standing, as an organization, for a private cause of action. ("The NAACP has not, after trial, met its burden of proof on the quasi-standing element of its public nuisance claim—that is, the requirement in public nuisance suits brought by non-governmental persons that plaintiff demonstrate 'special' or 'peculiar' injury … different in kind, and not just degree, from that sustained by the community." (citations omitted))

18. *Id.* at 453.

19. *See City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1088, 1116 (Ill. 2004).

20. *See Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc., et al.*, Aug. 4, 2021 Complaint (D. Mass. 2021) at ¶¶ 511-519.

21. Victor Schwartz, *N.Y.'s cheap shot against gun makers*, New York Daily News, (Jun. 15, 2021), https://www.nydailynews.com/opinion/ny-oped-a-cheap-shot-against-gun-makers-20210615-2vhlud-s4irfkzb5oary6e5pyxu-story.html; Ashley Zavala, *California lawmakers introduce bill that would let citizens sue gun sellers*, Jan. 14, 2021, https://www.kget.com/news/state-news/california-lawmakers-introduce-bill-that-would-let-citizens-sue-gun-sellers/.

22. New Jersey Assembly Bill No 6218, New Jersey Two Hundred Nineteenth Legislature, Second Annual Session, 2020.

23. *State of Oklahoma, ex rel., Mike Hunter v. Purdue Pharma, L.P.*, et al., No. CJ-2017-816, Original Petition (Dist. Ct. Cleveland Cnty. 2017) at ¶¶ 116-120.

24. Nate Raymond, *Oklahoma Judge Approves Teva's $85 Million Opioid Settlement*, Reuters, (June 24, 2019), https://www.reuters.com/article/uk-usa-

opioids-litigation/oklahoma-judge-approves-tevas-85-million-opioid-settlement-idUSKCN1TP2M8; Jan Hoffman, *Purdue Pharma and Sacklers Reach $270 Million Settlement in Opioid Lawsuit*," N.Y. Times, (March 26, 2019), https://www.nytimes.com/2019/03/26/health/opioids-purdue-pharma-oklahoma.html.

25. *State of Oklahoma v. Purdue Pharma L.P.*, No. CJ-2017-816, 2019 Okla. Dist. LEXIS 3486, 2019 WL 4019929 (Dist. Ct., Cleveland Cnty., Aug. 26, 2019).

26. David Lee, *Oklahoma Judge Says He Made $107 Million Miscalculation in Opioid Verdict*, Courthouse News Service, (October 15, 2019), https://www.courthousenews.com/oklahoma-judge-says-he-made-107-million-miscalculation-in-opioid-verdict/.

27. *Id.* at *12.

28. *State ex rel. Hunter v. Johnson & Johnson*, No. 118,474, 2021 Okla. LEXIS 60, 2021 WL 5191372 (Okla. November 9, 2021) at *1.

29 *Id.* at *5.

30. Notably, following the Oklahoma Supreme Court's decision, the Cherokee Nation filed for voluntary dismissal of its pending public nuisance claim against several pharmacy retailers in the U.S. District Court for the Eastern District of Oklahoma. *See Cherokee Nation v. CVS Pharmacy Inc., et al.*, No. 6:18-CV-00056, Jan. 11, 2022 Notice of Dismissal (E.D. Okla. 2018).

31. *King County v. JUUL Labs Inc., et al.*, No. 2:19-CV-01664, Oct. 16, 2019 Complaint (W.D. Wash. 2019).

32. *Id.* at ¶ 114.

33. *Id.* at ¶ 158.

34. *Id.* at ¶ 162.

35. *Id.* at ¶ 153.

36. *Id.* at ¶ 165.

37. Tiffany Kary and Jef Feeley, *Juul Accused by School Districts of Creating Vaping 'Nuisance'*, Bloomberg, (Oct. 8, 2019), https://www.bloomberg.com/news/articles/2019-10-07/juul-accused-by-school-districts-of-creating-vaping-nuisance.

38. *See* Makena Kelly, *New York attorney general sues Juul for deceptive marketing*, The Verge, (Nov. 19, 2019), https://www.theverge.com/2019/11/19/20972499/juul-pods-lawsuit-nyag-letitia-james-california-ftc-flavored-mint; Steve Karnowski, *Minnesota sues e-cigarette maker Juul over youth vaping rise*, ABC News, (Dec. 4, 2019), https://abcnews.go.com/Health/wireStory/minnesota-sues-cigarette-maker-juul-youth-vaping-rise-67499644); Edvard Pettersson and Erik Larson, *Juul Sued by California for Marketing E-Cigarettes to Teens*, Claims Journal, (Nov. 19, 2019), https://www.claimsjournal.com/news/west/2019/11/19/294163.htm; Jacqueline Howard, *North Carolina sues 8 e-cigarette companies, alleging marketing to children*, CNN, (Aug. 27, 2019), https://www.cnn.com/2019/08/27/health/ecigarette-north-carolina-lawsuit-bn.

39. *Rural Community Workers Alliance v. Smithfield Foods Inc.*, No. 5:20-CV-06063, April 23, 2020 Complaint (W.D. Mo. 2020).

40. *Id.*

41. *Rural Community Workers Alliance v. Smithfield Foods Inc.*, No. 5:20-CV-06063, May 5, 2020 Order Granting Defendants' Motion to Dismiss (W.D. Mo. 2020).

42. *Id.*

43. *Id.*

44. *See Derrick Palmer et al. v. Amazon.com Inc. et al.*, No. 1:20-CV-02468, June 3, 2020 Complaint (E.D.N.Y. 2020).

45. *Id.*

46. *Taynarvis Massey et al. v. McDonald's Corp. et al.*, No. 2020-CH-04247, May 19, 2020 Complaint (Ill. Cir. Ct. 2020).

47. *Id.*

48. *Taynarvis Massey et al. v. McDonald's Corp. et al.*, No. 2020-CH-04247, June 24, 2020 Order (Ill. Cir. Ct. 2020).

49. *Town of Cicero v. City View Multi Care Center LLC, et al.*, No. 20-CH-4046 (Ill. Cir. Ct. May 1, 2020);

Culver City v. LA School of Gymnastics, Inc., et al., No. 20-SMCV-01190 (LA Cnty Sup. Ct. 2020); *Hastings College of the Law, et al. v. City of San Francisco*, No. 20-CV-03033 (N.D. Cal. 2020).

50. *See* Fazida Karim, Azeezat A. Oyewande, Lamis F. Abdalla, Reem Chaudhry Ehsanullah, and Safeera Khan, *Social Media Use and Its Connection to Mental Health: A Systemic Review*, Cureus Journal of Medical Science, (Jun. 15, 2020), https://www.cureus.com/articles/31508-social-media-use-and-its-connection-to-mental-health-a-systematic-review; Shamard Charles, *Social Media Linked to Rise in Mental Health Disorders in Teens, Survey Finds*, NBC News, (Mar. 14, 2019), https://www.nbcnews.com/health/mental-health/social-media-linked-rise-mental-health-disorders-teens-survey-finds-n982526. ■

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