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9 Attorneys for Defendant  
10 ALBERTSONS LLC, wrongfully named and  
sued as ALBERTSONS COMPANIES, INC.

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA  
13

14 **U.S. EQUAL EMPLOYMENT**  
15 **OPPORTUNITY COMMISSION,**

16 **Plaintiff,**

17 **v.**

18 **ALBERTSONS COMPANIES, INC.,**

19 **Defendant.**  
20  
21

**Case No. 18-CV-0852-MMA-BGS**

**DEFENDANT ALBERTSONS  
LLC'S ANSWER TO  
PLAINTIFF U.S. EQUAL  
EMPLOYMENT  
OPPORTUNITY  
COMMISSION'S FIRST  
AMENDED COMPLAINT FOR  
CIVIL RIGHTS AND  
EMPLOYMENT  
DISCRIMINATION**

1 Albertsons LLC (“Albertsons”), which is or was the employer of the  
2 Charging Parties identified in the First Amended Complaint (“FAC”) by the Equal  
3 Employment Opportunity Commission (“EEOC”), admits, denies, and avers as  
4 follows:

5 **Nature of the Action**

6 The un-numbered allegations in the “Nature of the Action” section of the  
7 FAC is a purported narrative description of the case with conclusions of law to  
8 which no response is required. To the extent a response is necessary, Albertsons  
9 denies, generally and specifically, all allegations in the “Nature of the Action”  
10 paragraph, except Albertsons admits that the EEOC purports to bring this action  
11 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of  
12 1991 on behalf of Guadalupe Zamorano, Hermelinda Stevenson, and a class of  
13 similarly situated individuals.

14 **Jurisdiction and Venue**

15 1. The allegation in Paragraph 1 of the FAC contains solely a legal  
16 conclusion to which no response is required. To the extent a response is required,  
17 Albertsons denies, generally and specifically, all allegations in the Paragraph 1,  
18 except Albertsons admits that EEOC seeks to invoke this Court’s subject-matter  
19 jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345.

20 2. The allegations in Paragraph 2 of the FAC contain solely legal  
21 conclusions to which no responses are required. To the extent a response is  
22 required, Albertsons denies, generally and specifically, all allegations in the  
23 Paragraph 2.

24 3. Albertsons denies, generally and specifically, each and every  
25 allegation set forth in Paragraph 3.

26 **Parties**

27 4. Albertsons denies, generally and specifically, each and every  
28 allegation set forth in Paragraph 4, except that Albertsons admits that the EEOC is

1 an agency of the United States of America charged with the administration,  
2 interpretation and enforcement of Title VII.

3 5. Albertsons admits that Albertsons LLC has been doing business in,  
4 among other places, San Diego County, California, has employed at least 15  
5 employees, and that Albertsons Companies, Inc. is an Idaho corporation. Except as  
6 expressly admitted, Albertsons denies, generally and specifically, each and every  
7 allegation set forth in Paragraph 5.

8 6. Albertsons admits that Albertsons LLC has been an employer engaged  
9 in an industry affecting commerce within the meaning of Title VII. Except as  
10 expressly admitted, Albertsons denies, generally and specifically, each and every  
11 allegation set forth in Paragraph 6.

12 7. Albertsons denies, generally and specifically, each and every  
13 allegation set forth in Paragraph 7.

14 8. Albertsons denies, generally and specifically, each and every  
15 allegation set forth in Paragraph 8, except that Albertsons lacks sufficient  
16 information and belief to admit or deny whether the EEOC is ignorant of the true  
17 names of the purported “Doe defendants” and on that basis, Albertsons denies this  
18 allegation in Paragraph 8.

19 **Statement of Claims**

20 9. Albertsons admits the allegations in Paragraph 9.

21 10. Albertsons lacks sufficient information and belief to admit or deny the  
22 allegations in Paragraph 10, and for that reason, denies, generally and specifically,  
23 each and every allegation set forth in Paragraph 10.

24 11. Albertsons admits that the EEOC issued to Albertson’s, Albertson’s  
25 LLC and Albertsons, Inc. three Letters of Determination, one each on behalf of  
26 Zamorano, Stevenson, and Israel Hernandez, and that the Letters of Determination  
27 speak for themselves. Except as expressly admitted, Albertsons denies, generally  
28 and specifically, each and every allegation set forth in Paragraph 11.

1           12. Albertsons admits that the EEOC engaged in communications with the  
2 Company regarding its Letter of Determination. Except as expressly admitted,  
3 Albertsons denies, generally and specifically, each and every allegation set forth in  
4 Paragraph 12.

5           13. Albertsons admits the allegations set forth in Paragraph 13.

6           14. Albertsons admits that the EEOC issued to Albertsons's prior counsel  
7 three letters indicating that conciliation efforts had been unsuccessful, one each on  
8 behalf of Zamorano, Stevenson, and Israel Hernandez, and that the letters speak for  
9 themselves. Except as expressly admitted, Albertsons denies, generally and  
10 specifically, each and every allegation set forth in Paragraph 14.

11           15. Albertsons denies, generally and specifically, each and every  
12 allegation set forth in Paragraph 15.

13           16. Albertsons denies, generally and specifically, each and every  
14 allegation set forth in Paragraph 16.

15           a. Albertsons denies, generally and specifically, each and every  
16 allegation set forth in Paragraph 16(a).

17           b. Albertsons denies, generally and specifically, each and every  
18 allegation set forth in Paragraph 16(b).

19           c. Albertsons denies, generally and specifically, each and every  
20 allegation set forth in Paragraph 16(c), except that Albertsons admits that Zamorano  
21 has worked for Albertsons LLC or a predecessor since August 2007, and at one  
22 time worked at Store 6785 located on Lake Murray Blvd.

23           d. Albertsons denies, generally and specifically, each and every  
24 allegation set forth in Paragraph 16(d).

25           e. Albertsons denies, generally and specifically, each and every  
26 allegation set forth in Paragraph 16(e).

27           f. Albertsons denies, generally and specifically, each and every  
28 allegation set forth in Paragraph 16(f).

1 g. Albertsons denies, generally and specifically, each and every  
2 allegation set forth in Paragraph 16(g).

3 h. Albertsons denies, generally and specifically, each and every  
4 allegation set forth in Paragraph 16(h), except that Albertsons admits that  
5 Zamorano requested a transfer to a different store.

6 i. Albertsons denies, generally and specifically, each and every  
7 allegation set forth in Paragraph 16(i), except that Albertsons admits that Stevenson  
8 has worked for Albertsons LLC or a predecessor since 1989 and that she, at one  
9 time, worked at Store 6785, which is located on Lake Murray Blvd.

10 j. Albertsons denies, generally and specifically, each and every  
11 allegation set forth in Paragraph 16(j).

12 k. Albertsons denies, generally and specifically, each and every  
13 allegation set forth in Paragraph 16(k).

14 l. Albertsons denies, generally and specifically, each and every  
15 allegation set forth in Paragraph 16(l), except that Albertsons admits that Stevenson  
16 requested a transfer to a different store.

17 m. Albertsons denies, generally and specifically, each and every  
18 allegation set forth in Paragraph 16(m).

19 n. Paragraph 16(n) is compound, but, answering Paragraph 16(n)  
20 of the FAC, and in the interest of clarity, Albertsons denies, generally and  
21 specifically, each and every allegation set forth in Paragraph 16(n), but admits that  
22 no one was subjected to harassment based on a no-Spanish policy.

23 17. Albertsons denies, generally and specifically, each and every  
24 allegation set forth in Paragraph 17.

25 18. Albertsons denies, generally and specifically, each and every  
26 allegation set forth in Paragraph 18.

27 19. Albertsons denies, generally and specifically, each and every  
28 allegation set forth in Paragraph 19.

1 **Prayer for Relief**

2 The remainder of EEOC’s FAC constitutes EEOC’s Prayer for Relief, to  
3 which no response is required. To the extent a response is required, Albertsons  
4 restates and incorporates by reference its responses above as though set forth in full  
5 herein and denies that EEOC is entitled to the relief it seeks on behalf of the  
6 charging parties and the putative class.

7 A. Albertsons denies that the EEOC or any of the purported “Charging  
8 Parties” are entitled to the relief sought.

9 B. Albertsons denies that the EEOC or any of the purported “Charging  
10 Parties” are entitled to the relief sought.

11 C. Albertsons denies that the EEOC or any of the purported “Charging  
12 Parties” are entitled to the relief sought.

13 D. Albertsons denies that the EEOC or any of the purported “Charging  
14 Parties” are entitled to the relief sought.

15 E. Albertsons denies that the EEOC or any of the purported “Charging  
16 Parties” are entitled to the relief sought.

17 F. Albertsons denies that the EEOC or any of the purported “Charging  
18 Parties” are entitled to the relief sought.

19 G. Albertsons denies that the EEOC or any of the purported “Charging  
20 Parties” are entitled to the relief sought.

21 **AFFIRMATIVE DEFENSES**

22 In further answer to EEOC’s FAC, Albertsons asserts the following separate  
23 and distinct affirmative defenses. Albertsons reserves the right to amend or  
24 supplement its answer and/or defenses as may be warranted by the information  
25 developed through subsequent discovery. Nothing stated herein constitutes a  
26 concession as to whether or not EEOC or Albertsons bears the burden of proof on  
27 any issue.

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**FIRST DEFENSE**

**(Failure to State a Claim)**

The EEOC’s FAC, and each purported claim for relief contained therein, fail to state facts sufficient to constitute a claim against Albertsons.

**SECOND DEFENSE**

**(Statute of Limitations)**

EEOC’s FAC, and each purported claim for relief contained therein, are either outright barred by the applicable statute of limitations, or barred to the extent EEOC seeks to recover damages for acts occurring beyond the applicable statute of limitations, including but not limited to those contained in 42 U.S.C. §§ 2000e-5(e)(1), (f)(1).

**THIRD DEFENSE**

**(Waiver)**

EEOC and Charging Parties have waived, in whole or in part, the right, if any, to pursue any of the purported claims for relief in the FAC by reason of their own actions, inactions, and course of conduct.

**FOURTH DEFENSE**

**(Estoppel)**

EEOC’s FAC, and each purported claim for relief contained therein, are barred, in whole or in part, by the doctrine of estoppel.

**FIFTH DEFENSE**

**(Laches)**

EEOC’s FAC, and each purported claim for relief contained therein, are barred, in whole or in part, by the doctrine of laches because EEOC and the Charging Parties unreasonably delayed in bringing their claims.

**SIXTH DEFENSE**

**(Unclean Hands)**

EEOC’s FAC on behalf of Charging Parties, and each purported claim for

1 relief contained therein, are barred, in whole or in part, by the doctrine of unclean  
2 hands because Charging Parties engaged in conduct that proximately caused or  
3 contributed to any injuries allegedly suffered.

4 **SEVENTH DEFENSE**

5 **(Legitimate Business Interest/Non-Discriminatory Reasons)**

6 EEOC's FAC is barred, in whole or in part, because the acts about which  
7 EEOC and Charging Parties complain, if any, were undertaken in the ordinary  
8 course of business for legitimate business purposes that were not discriminatory,  
9 retaliatory, or harassing.

10 **EIGHTH DEFENSE**

11 **(Not a Motivating Factor/No Discriminatory or Retaliatory Motive)**

12 EEOC's FAC is barred because Charging Parties' race, national origin, color,  
13 and allegedly protected conduct were not substantial motivating factors for any of  
14 Albertsons's conduct or decisions concerning their employment, and Albertsons  
15 would have taken the legitimate action they did regarding their employment  
16 irrespective of Charging Parties' race, national origin, color, or allegedly protected  
17 conduct.

18 **NINTH DEFENSE**

19 **(No Severe or Pervasive Conduct)**

20 EEOC's FAC is barred because, if any actions alleged in the FAC occurred,  
21 which Albertsons denies, such actions were neither severe nor pervasive and  
22 therefore do not constitute harassment.

23 **TENTH DEFENSE**

24 **(Performance of Duties)**

25 EEOC's FAC is barred because Albertsons fully performed all contractual,  
26 statutory, and other duties owed to Charging Parties under applicable law.

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**ELEVENTH DEFENSE**

**(Faragher/Ellerth Defense)**

EEOC’s FAC is barred because: (a) Albertsons exercised reasonable care to prevent and correct promptly any harassing, discriminatory or otherwise unlawful behavior by having, among other policies, anti-harassment and anti-discrimination policies; and (b) Charging Parties unreasonably failed to take advantage of any preventative or corrective opportunities provided by Albertsons or to “otherwise avoid harm” as that expression is used in *Burlington Northern Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); and *Kohler v. Inter-Tel Technologies*, 244 F.3d 1167 (9th Cir. 2001).

**TWELFTH DEFENSE**

**(Not a Member of a Class)**

EEOC’s FAC is barred to the extent that Charging Parties are not members of a class that Title VII is designed to protect.

**THIRTEENTH DEFENSE**

**(No Ratification or Approval)**

EEOC’s FAC is barred to the extent that Albertsons did not have knowledge of, ratify, or approve any of the unlawful conduct alleged in EEOC’s FAC.

**FOURTEENTH DEFENSE**

**(Alleged Misconduct Not Attributable to Defendant)**

Any improper acts or statements were outside the scope of the actor’s employment and cannot be imputed to Albertsons.

**FIFTEENTH DEFENSE**

**(Privilege and Justification)**

EEOC’s FAC, and each claim for relief alleged therein, are barred to the extent that the acts complained about were privileged or justified.

1 **SIXTEENTH DEFENSE**

2 **(Lack of Causation)**

3 EEOC’s FAC is barred because Charging Parties have not suffered any  
4 damages as a result of any acts or omissions by Albertsons.

5 **SEVENTEENTH DEFENSE**

6 **(Failure to Mitigate Damages)**

7 EEOC’s FAC is barred, in whole or in part, by Charging Parties’ failure to  
8 mitigate or reasonably attempt to mitigate their damages, if any.

9 **EIGHTEENTH DEFENSE**

10 **(No Unlawful, Malicious, Oppressive, or Fraudulent Conduct)**

11 Albertsons avers that it has not engaged in unlawful intentional  
12 discrimination with respect to any of its employees, did not engage in any  
13 malicious, oppressive, or fraudulent discriminatory practice with regard to the  
14 legally protected rights of its employees, and therefore cannot be liable for punitive  
15 damages.

16 **NINETEENTH DEFENSE**

17 **(No Basis for Punitive Damages)**

18 All of Albertsons’s actions with regard to Charging Parties were conducted  
19 in good faith and without fraud, oppression, or malice toward Charging Parties and  
20 their rights, thereby precluding any and all claims of special, exemplary, or punitive  
21 damages. And any award of punitive damages would be barred by the due-process  
22 and equal-protection provisions of the United States constitution.

23 **TWENTIETH DEFENSE**

24 **(Emotional Distress Not Caused By Albertsons)**

25 If Charging Parties have suffered any “emotional pain, suffering,  
26 inconvenience, mental anguish, humiliation, [or] loss of enjoyment of life,” as  
27 alleged in Paragraph D of EEOC’s Prayer for Relief (and Albertsons denies that  
28 Charging Parties have suffered any such emotional distress), such emotional

1 distress was proximately caused by factors other than Charging Parties’  
2 employment and the actions of Albertsons or anyone acting on Albertsons’s behalf.

3 **TWENTY-FIRST DEFENSE**

4 **(Claims Beyond Administrative, Investigation, and Conciliation Processes)**

5 EEOC’s FAC and each claim for relief alleged therein are barred, in whole or  
6 in part, because they are beyond the scope of any administrative charge or the  
7 EEOC’s investigation thereof, were not subject to administrative, investigation, or  
8 conciliation processes, and were not included in any investigation, determination, or  
9 conciliation processes by the EEOC.

10 **TWENTY-SECOND DEFENSE**

11 **(Untimely Exhaustion)**

12 To the extent that EEOC seeks relief for alleged unlawful conduct occurring  
13 more than the prescribed days within which Charging Parties are required to file a  
14 charge with the appropriate state or federal administrative body, such claims are  
15 barred.

16 **TWENTY-THIRD DEFENSE**

17 **(Claim Not Amenable to Common Proof)**

18 EEOC’s FAC on behalf of Charging Parties is barred to the extent that it is  
19 brought on behalf of a class of similarly aggrieved employees that, collectively, has  
20 been the victim of harassment or suffered emotional distress, which Albertsons  
21 denies, because such claims are not amenable to common proof and there is no  
22 common pattern and practice that can be established by the EEOC.

23 **TWENTY-FOURTH DEFENSE**

24 **(Reservation of Rights)**

25 Albertsons has not knowingly or intentionally waived any applicable  
26 defenses and reserves the right to assert and rely on such other applicable defenses  
27 as may later become available or apparent. Albertsons further reserves the right to  
28 amend its answer and/or defenses accordingly and/or to delete defenses that

1 Albertsons determines are not applicable during the course of subsequent discovery.  
2 Nothing stated herein constitutes a concession as to whether or not EEOC or  
3 Defendants bear the burden of proof on any issue.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Albertsons prays for judgment as follows:

- 6 1. That EEOC and Charging Parties takes nothing by reason of the FAC;  
7 2. That judgment be entered for Albertsons and against EEOC and  
8 Charging Parties on all claims for relief;  
9 3. That Albertsons shall recover all costs of suit and reasonable  
10 attorneys' fees incurred herein; and  
11 4. For such other relief as the Court deems just and proper.

12  
13 Dated: December 21, 2018

Respectfully submitted,  
Jones Day

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16 By: /s/ Steven M. Zdravec  
17 Steven M. Zdravec  
Scott Morrison

18 Counsel for Defendant  
19 ALBERTSONS LLC.  
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