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14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 U.S. EQUAL EMPLOYMENT
17 OPPORTUNITY COMMISSION,

18 Plaintiff,

19 vs.

20 ALBERTSONS COMPANIES INC.,
21 AND DOES 1-5, INCLUSIVE,

22 Defendants.

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

FIRST AMENDED COMPLAINT

- **CIVIL RIGHTS**
- **EMPLOYMENT DISCRIMINATION**

(42 U.S.C. §§2000e, et seq.)

JURY TRIAL DEMAND

NATURE OF THE ACTION

23 This is an action under Title VII of the Civil Rights Act of 1964 and Title I
24 of the Civil Rights Act of 1991 ("Title VII") to correct unlawful employment
25 practices on the basis of national origin and to provide appropriate relief to
26 Guadalupe Zamorano, Hermelinda Stevenson (collectively referred to herein as
27 "Charging Parties") and a class of similarly aggrieved individuals who were
28 adversely affected by such practices. As set forth with greater particularity in
paragraph 16 of this First Amended Complaint, Plaintiff U.S. Equal Employment

1 Opportunity Commission asserts that Defendants Albertsons Companies Inc. and
2 Does 1-5 (collectively referred to herein as “Defendants”), subjected Charging
3 Parties and a class of similarly aggrieved individuals to harassment in violation of
4 Title VII.

5 **JURISDICTION AND VENUE**

6 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451,
7 1331, 1337, 1343 and 1345.

8 2. This action is authorized and instituted pursuant to § 706(f)(1) and
9 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-
10 5(f)(1) and (3), (“Title VII”) and § 102 of the Civil Rights Act of 1991, 42 U.S.C.
11 § 1981(a).

12 3. The employment practices alleged to be unlawful were committed
13 within the jurisdiction of the United States District Court for the Southern District
14 of California.

15 **PARTIES**

16 4. Plaintiff U.S. Equal Employment Opportunity Commission
17 (“Plaintiff,” “EEOC,” or the “Commission”) is an agency of the United States of
18 America charged with the administration, interpretation and enforcement of Title
19 VII and is expressly authorized to bring this action by §706(f)(1) and (3) of Title
20 VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

21 5. At all relevant times, Albertsons Companies Inc. (“Albertsons”) has
22 continuously been an Idaho corporation doing business in, amongst other places,
23 San Diego County, State of California, and has continuously had at least fifteen
24 (15) employees.

25 6. At all relevant times, Defendant Albertsons has continuously been an
26 employer engaged in an industry affecting commerce within the meaning of
27 Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-1 (b), (g), and (h).

28 7. All of the acts and failures to act alleged herein were duly performed

1 by and attributable to all Defendant(s), each acting as a successor, agent, alter ego,
2 employee, indirect employer, joint employer, integrated enterprise and/or under the
3 direction and control of the others, except as specifically alleged otherwise. Said
4 acts and failures to act were within the scope of such agency and/or employment,
5 and each Defendant participated in, approved and/or ratified the unlawful acts and
6 omissions by the other Defendants complained of herein. Whenever and wherever
7 reference is made in this First Amended Complaint to any act by a Defendant or
8 Defendants, such allegations and reference shall also be deemed to mean the acts
9 and failures to act of each defendant acting individually, jointly, and/or severally.

10 8. Plaintiff is ignorant of the true names and capacities of each
11 Defendant sued as DOES 1 through 5, inclusively, and therefore Plaintiff sues said
12 defendant(s) by fictitious names. The Commission reserves the right to amend the
13 first amended complaint to name each DOE defendant corporation/company as it
14 becomes known. Plaintiff alleges that each DOE defendant was in some manner
15 responsible for the acts and omissions alleged herein and Plaintiff will amend the
16 first amended complaint to allege such responsibility when the same shall have
17 been ascertained by Plaintiff.

18 **STATEMENT OF CLAIMS**

19 9. More than thirty days prior to the institution of this lawsuit, Charging
20 Parties filed charges of discrimination with the Commission alleging violations of
21 Title VII by Defendants.

22 10. Subsequent to the Charging Parties filing their charges of
23 discrimination, the EEOC investigated the charges against Defendant Albertsons.

24 11. On July 10, 2017, the Commission issued to Defendant Albertsons
25 Letters of Determination finding reasonable cause to believe that Charging Parties
26 and a class of employees were subjected to disparate treatment and a hostile work
27 environment because of their national origin (Hispanic and/or Mexican) in
28 violation of Title VII. The Commission made a further like and related finding

1 that there was reasonable cause to believe that the Charging Parties and a class of
2 similarly situated individuals were subjected to discrimination on the basis of
3 national origin (Hispanic and/or Mexican) and/or race (Hispanic) in violation of
4 Title VII which lead to discipline. The Commission further invited Defendant to
5 join with the Commission in informal methods of conciliation to endeavor to
6 eliminate the discriminatory practices and provide appropriate relief.

7 12. The Commission engaged in communications with Defendant
8 Albertsons to provide Defendant with the opportunity to remedy the
9 discriminatory practices described in the Letters of Determination.

10 13. The Commission was unable to secure through informal methods of
11 conciliation, including but not limited to an in-person conciliation conference,
12 from Defendants a conciliation agreement acceptable to the Commission.

13 14. On January 23, 2018, the Commission issued to Defendant Albertsons
14 Notices of Failure of Conciliation.

15 15. All conditions precedent to the initiation of this lawsuit have been
16 fulfilled.

17 16. Since at least 2012, Defendants have engaged in unlawful
18 employment practices in violation of §§ 703(a)(1) and 704 of Title VII, 42 U.S.C.
19 §§ 2000e-2(a)(1) by subjecting the Charging Parties and a class of similarly
20 aggrieved individuals to harassment on the basis of national origin. The unlawful
21 employment practices include but are not limited to:

22 a. In or about 2012, Albertsons developed an unwritten English-only
23 policy, which Albertsons implemented as essentially a no Spanish policy. In a
24 training video, managers and employees were instructed that employees should not
25 speak Spanish as long as there was a non-Spanish speaking person present.
26 Pursuant to those instructions/training, managers and employees, including but not
27 limited to Richard Brown, Store Director of Store #6785, located on Lake Murray
28 Blvd in San Diego, California, and Jerri Burleson, Assistant Store Director of Store

1 #6785, located on Lake Murray Blvd in San Diego, California, implemented a no
2 Spanish policy. Brown, Burleson, and others communicated to the Charging
3 Parties and other Hispanic employees that they could not speak Spanish anywhere
4 on the premises regardless of whether they were on break.

5 b. Brown, Burleson, and others verbally harassed Hispanic employees,
6 telling them not to speak Spanish, threatening them with discipline, and publicly
7 reprimanding them for allegedly speaking Spanish.

8 c. Charging Party Guadalupe Zamorano has worked for Defendant
9 Albertsons since August 2007. She worked in Albertsons Store #6785, located on
10 Lake Murray Blvd. In October 2012, Brown reprimanded Zamorano in front of the
11 store for speaking Spanish.

12 d. After the counseling session, Zamorano called Albertsons' hotline
13 to complain about Brown's conduct and prohibition against speaking Spanish at
14 work.

15 e. Defendants failed to take corrective action in response to the
16 complaint by the Zamorano. Upon receipt of the Charging Party Zamorano's
17 complaint, a union representative investigated the complaint, and told Zamorano
18 that she needed to speak English because she was living in the United States. There
19 was no further action taken in regards to the complaint.

20 f. Charging Party Zamorano was reprimanded by Brown again on or
21 about December 6, 2012 for speaking Spanish even though she was speaking with
22 a Spanish-speaking customer. Brown again instructed her to only speak in English
23 at work.

24 g. Brown harassed Charging Party Zamorano about not speaking
25 Spanish about three or five times per week. Brown also told other employees not to
26 speak Spanish to Zamorano. Burleson would comment/warn Zamorano and other
27 Hispanic employees to not speak Spanish about five to ten times per day. Burleson
28

1 would also tell Zamorano and other Hispanic employees to “speak English” even
2 outside of work shifts and especially before Hispanic employees even clocked in.

3 h. As a result of the harassment, Charging Party Zamorano requested
4 a transfer to a different store on or about November 22, 2013. She wrote on her
5 transfer request form that she was requesting the transfer because of the
6 harassment she was subjected to. Brown refused to submit her transfer request until
7 she filled out a form that did not include the statement about harassment.

8 i. Charging Party Hermelinda Stevenson has worked for Defendant
9 Albertsons since 1989, and was transferred to Store #6785 in August 2012. In
10 October 2012, Stevenson was also reprimanded by Brown in front of the store for
11 speaking Spanish for the same incident that Zamorano was reprimanded for.

12 j. Stevenson and her coworkers were also prohibited by Brown and
13 Burleson from speaking Spanish at work, even during breaks in the break room. As
14 a result of the harassment and monitoring from management, Stevenson and other
15 workers would leave the premises to eat lunch in order to feel comfortable.

16 k. When Burleson was on the floor, on average she warned Stevenson
17 not to speak Spanish twice a day. There were instances when Stevenson, along
18 with other Hispanic co-workers, would be clocking in or come back from lunch,
19 Burleson would tell them not to speak Spanish.

20 l. Charging Party Stevenson requested a transfer to a different store on
21 or about June 3, 2013 in part because the harassment and other issues at work were
22 making her physically sick, including anxiety and stomach issues.

23 m. Other Albertsons employees were not allowed to speak Spanish
24 and were subjected to harassment, including but not limited to one employee being
25 instructed not to speak Spanish by a department head as managers did not like
26 when she spoke Spanish, another employee was harassed by coworkers when she
27 spoke in Spanish, and an employee was told by the managers that the employees
28 could not speak Spanish anywhere even with Spanish speaking customers.

1 n. Other non-Hispanic employees were not subjected to harassment or
2 subjected to the no Spanish policy.

3 17. The effect of the practices complained as described in paragraph 16
4 has been to deprive Charging Parties and a class of similarly aggrieved individuals
5 of equal employment opportunities and otherwise adversely affects their status as
6 employees because of their national origin, Hispanic and/or Mexican.

7 18. The unlawful employment practices complained of in paragraph 16
8 above were intentional and caused Charging Parties and a class of aggrieved
9 individuals to suffer emotional distress.

10 19. The unlawful employment practices complained of in paragraph 16
11 above were done with malice or with reckless indifference to the federally
12 protected rights of Charging Parties and a class of aggrieved individuals.

13 **PRAYER FOR RELIEF**

14 Wherefore, the Commission respectfully requests that this Court:

15 A. Grant a permanent injunction enjoining Defendants, their officers,
16 successors, assigns, and all persons in active concert or participation with each of
17 them, from engaging in national origin harassment and any other employment
18 practice which discriminates on the basis of national origin;

19 B. Order Defendants to institute and carry out policies, practices, and
20 programs to ensure that they would not engage in further unlawful employment
21 practices in violation of §§ 703(a)(1) and 704 of Title VII;

22 C. Order Defendants to make Charging Parties and a class of aggrieved
23 individuals whole by providing compensation for past and future pecuniary losses,
24 including where appropriate back pay and front pay with prejudgment interest on
25 any lost pay and benefits, in amounts to be determined at trial;

26 D. Order Defendants to make Charging Parties and a class of aggrieved
27 individuals whole by providing compensation for past and future non-pecuniary
28 losses resulting from the unlawful employment practices complained of above,

1 including emotional pain, suffering, inconvenience, mental anguish, humiliation
2 and loss of enjoyment of life, in amounts to be determined at trial;

3 E. Order each Defendant to pay Charging Parties and a class of
4 aggrieved individuals punitive damages for its intentional, malicious, and reckless
5 conduct described above in an amount to be determined at trial;

6 F. Award the Commission its costs of this action; and

7 G. Grant such further relief as the Court deems necessary and proper in
8 the public interest.

9 **JURY TRIAL DEMAND**

10 The Commission requests a jury trial on all questions of fact raised by its
11 First Amended Complaint.


12 Dated: November 19, 2018

Respectfully Submitted

13
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