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BRANCH NAME: Central District

PLAINTIFF/PETITIONER: DELFINA LEYTTE-ARRIETA
DEFENDANT/RESPONDENT: THE VONS COMPANIES, INC., ET AL.

(Check one): ☒ **UNLIMITED CASE** ☐ **LIMITED CASE**
(Amount demanded exceeded \$25,000) (Amount demanded was \$25,000 or less)

1. A judgment, decree, or order was entered in this action on *(date)*: Minute Order entered on August 18, 2023.
2. A copy of the judgment, decree, or order is attached to this notice.
Exhibit A - Minute Order regarding Defendant The Vons Companies, Inc.'s Notice of Demurrer and Demurrer to the first, second, tenth, and eighteenth causes of action - First Amended Complaint

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

PLAINTIFF/PETITIONER: DELFINA LEYTTTE-ARRIETA	CASE NUMBER: 22STCV38208
DEFENDANT/RESPONDENT: THE VONS COMPANIES, INC., ET AL.	

PROOF OF SERVICE BY FIRST-CLASS MAIL**NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:

- a. ☐ deposited the sealed envelope with the United States Postal Service.
- b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on *(date)*:
- b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:



(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 17

22STCV38208

**DELFINA LEYTTE-ARRIETA vs THE VONS COMPANIES,
et al.**

August 18, 2023

9:30 AM

Judge: Honorable Jon R. Takasugi
Judicial Assistant: A. Escobar
Courtroom Assistant: J. Shuton

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Saul Acherman, Esq. (VIA LA COURTCONNECT); ELI HAMBLET (VIA LA COURTCONNECT)

For Defendant(s): MARA D. CURTIS; Michaela Pizarro Delacruz (VIA LA COURTCONNECT)

Other Appearance Notes: COURT REPORTER VERONICA RODRIGUEZ, CSR # 12215 (VIA LA COURTCONNECT)

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Veronica Rodriguez, CSR # 12215, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court's tentative ruling is posted online for parties to review.

The matter is called for hearing.

After hearing oral argument, the Court adopts its tentative ruling as the final order of the court, as follows:

Defendant's demurrer to the first, second, tenth, and eighteenth causes of action is SUSTAINED, WITHOUT LEAVE TO AMEND.

On 12/8/2022, Plaintiff Delfina Leytte-Arrieta (Plaintiff) filed suit against the Vons Companies, Inc. (Vons) and Monabell Martinez. On 5/19/2023, Plaintiff filed a first amended complaint (FAC) alleging: (1) retaliation (FEHA); (2) retaliation (Labor Code section 1102.5); (3) harassment (FEHA); (4) discrimination based on religion (FEHA); (5) age discrimination (FEHA); (6) disability discrimination (FEHA); (7) failure to engage in the interactive process (FEHA); (8) failure to prevent harassment and discrimination (FEHA); (9) wrongful discharge in

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violation of public policy; (10) waiver of rights, forums, or procedures and releases of claims; (11) failure to provide meal breaks; (12) failure to provide rest breaks; (13) failure to pay overtime; (14) failure to provide accurate, itemized wage statements; (15) failure to pay all wages due upon discharge; (16) failure to reimburse expenses; (17) unlawful business practices; and (18) civil penalties pursuant to the Private Attorneys General Act (PAGA).

Now, Defendant Vons (Defendant) demurs to the first, second, tenth, and eighteenth causes of action.

Discussion

Defendant argues that Plaintiff cannot state a claim for her first, second, tenth, and eighteenth causes of action because they are subject to the Garmon preemption as well as preempted by the Labor Management Relations Act (LMRA).

After review, the Court agrees.

Here, Vons is a union employer that operates various retail grocery stores throughout Southern California. Plaintiff is a former Vons employee who worked for Vons from Fall 2020 through February 2022. (FAC, ¶¶ 4, 13.) As a Vons employee working for the Vons store in Glendale, California, Plaintiff was a member of UFCW Union Local 770 and, thus, subject to the “Retail Food, Meat, Bakery, Candy and General Merchandise” collective bargaining agreement (the CBA) which Vons entered into with UFCW Union Locals 135, 324,. (See RJN, Exh. A, Id. at ¶ 22.)

On or about February 25, 2022, Plaintiff was suspended from her position at Vons—indefinitely, without pay. (Id. at ¶¶ 24-25.) Believing this suspension to be unjustified, Plaintiff proceeded to file a grievance with the Union to challenge her discipline in an effort to reverse it. (Id. at ¶ 26.)

Plaintiff’s grievance proceeded under the applicable grievance procedures contained in Article 12 of the CBA. (See RJN, Ex. A (the CBA), at Art. 12.) Article 12 is entitled “Adjustment and Arbitration” and details the procedures the Union may invoke to prosecute grievances with Vons on behalf of its members, including Plaintiff. (Ibid.) As is relevant here, Article 12 states that grievances brought by the Union on behalf of its members are resolved through a two-stage process. (Ibid.) First, within one week of when the grievance is filed, representatives of both the Union and Vons meet to discuss the grievance to see if it can be settled or resolved without need for further action. (Ibid.) Second, if no resolution or settlement is possible at stage one, the Union

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has the right to submit the grievance to binding arbitration. (Ibid.)

Consistent with the provisions of the CBA, in filing her grievance, Plaintiff agreed that the Union “shall have the exclusive authority to submit grievances to arbitration, withdraw grievances, settle and compromise grievances and decline to invoke the grievance procedures of a collective bargaining contract.” (See RJN, Ex. B (Record of Grievance).)

As contemplated by the CBA, the representatives of the Union and Vons proceeded to meet within one week of Plaintiff’s grievance to discuss the grievance and whether it could be resolved or settled without the need for arbitration. (FAC, ¶ 26.) At that meeting, the Union elected to exercise its “exclusivity authority” to settle the grievance in exchange for reinstatement of Plaintiff through a last chance agreement. (FAC, ¶¶ 26-27; RJN Ex. C.) The last chance agreement that the Union negotiated stipulated that Plaintiff would need to release any claims that she had against the Union and Vons relating to the grievance (the “Reinstatement and Release Offer”) if she wished to avail herself of the proposed settlement that her Union had negotiated on her behalf. (FAC, ¶¶ 27-28; RJN, Ex. C.)

Ultimately, Plaintiff declined to agree to her Union’s proposed resolution of her grievance and, therefore, alleges that no reinstatement was possible and that she was terminated from her position. FAC, ¶¶ 28-29; RJN, Ex. D (March 23, 2023 Union Letter Re: Grievance & Offer of Reinstatement).

Now, Plaintiffs alleges that the Union’s decision to settle her grievance in exchange for an offer of reinstatement that would have required Plaintiff to release the Union and Vons from any claims arising from the grievance: (1) is retaliation under FEHA (first cause of action); (2) is retaliation under Labor Code § 1102.5 (second cause of action); and (3) violates Labor Code § 432.6 (tenth cause of action). Plaintiff also seeks to represent the Labor Workforce Development Agency and “similarly aggrieved employees” in a representative claim for PAGA civil penalties (eighteenth cause of action) predicated upon that same contention that her Union’s practice of resolving grievances through restatement agreements that include releases of claims violates § 432.6 and is, therefore, retaliation under § 1102.5. (FAC, ¶¶ 187-192.)

The NLRA protects employees’ right to engage in “concerted activities” for mutual aid or protection. (San Diego Building Trades Council v. Garmon (1959) 359 U.S. 236.) Specifically, NLRA Section 7 protects the right of employees ‘to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargain or other mutual aid or protect.’”

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(Moreno v. UtilQuest, LLC (9th Cir. 2022) 29 F.4th 567, 573, quoting 29 U.S.C. § 157).

“Section 8 bars unfair labor practices by employers and labor organizations and also makes it illegal ‘for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the NLRA.’” (Ibid, quoting 29 U.S.C. § 158(a)-(b), alternation omitted).

“When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.” (Garmon, 359 U.S. at 245. “After Garmon, the focus of the NLRB’s primary jurisdiction is the potential for conflict with federal policy.” (Retail Prop. Trust v. United Bhd. of Carpenters (9th Cir. 2014) 768 F.3d 938, 952 (citing Garmon, 359 U.S. at 246). In Garmon, the “Supreme Court acknowledge that it is not always clear whether a particular activity is preempted, but ‘even when a court is unsure,’ it should leave the determination to the [NLRB].” (Moreno, 29 F.4th at 574, quoting Bassette v. Stone Container Corp. (9th Cir. 1994) 25 F.3d 757, 760.)

What’s more, for purposes of determining whether Garmon preemption applies, “[i]t is not the label affixed to the cause of action under state law that controls the determination of the relationship between state and federal jurisdiction.” (United Ass’n of Journeymen & Apprentices v. Borden (1963) 374 U.S. 690, 698.) Rather, the legally operative question is whether the state law claims averred (irrespective of how they are alleged and the label affixed) “could arguably support a finding that the conduct [at issue] violated the NLRA.” (Moreno, supra, 29 F.4th at p. 574, citing Borden, 374 U.S. at p. 694, 698). If the conduct can, the state law claim is subject to Garmon preemption; if the conduct cannot, Garmon preemption is inapplicable. (Ibid.) When an alleged claim is based “at least in part on union activities” it is preempted irrespective of the plaintiff’s characterization. (Brand v. First Transit, Inc. (9th Cir. 2008) 278 Fed. Appx. 722, 724.)

For example, while not binding on this Court, in Platt v. Jack Cooper Transport. Co., Inc. 94 (8th Cir. 1992) 959 F.2d 91, 94, the plaintiff alleged he was retaliated against under Section 1102.5 for making safety complaints. (Ibid.) The CBA at issue, however, specifically protected the plaintiff’s right to make safety complaints. (Ibid.) Because of that fact, the court found that plaintiff’s retaliation complaint was subject to Garmon preemption as it involved the plaintiff’s invocation of a right provided for in his CBA. (Ibid.)

Here, Plaintiff’s first, second, tenth, and eighteenth causes of action are predicated on the allegation that the offer of the Reinstatement and Release Offer – by Plaintiff’s Union in

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resolution of her grievance and the failure to return her to work unless it was signed – was retaliation and a violation of state law. In other words, Plaintiff alleges that the Reinstatement and Release Offer – offered by her Union – was retaliatory and violates Section 432.6. The filing of a grievance is a clear invocation of a right provided for under the CBA and an individual employee’s reasonable and honest invocation of a right provided for in his collective bargaining agreement” is protected concerted activity under Section 7. (NLRB v. City Disposal (1984) 465 U.S. 822, 841; Town & Country LP Gas Serv. Co. (1981) 255 NLRB 1149, 1150 (employer violated the NLRA because it “retaliate[d] against [the employee] for filing his grievance...”). Moreover, in order to adjudicate these claims, the Court would have to infringe on the Union’s authority to resolve grievances. Such conduct is clearly based on union activities, and thus is preempted under Garmon. (Brand, supra, 278 Fed. Appx. at p. 724.)

In opposition, Plaintiff argues that there is no preemption because “[t]he Union did not offer the [last chance] [a]greement, [Vons] did.” (Opp., 4: 11-12.) However, as noted by Defendant in reply, the Last Chance Agreement was offered by Vons as a result of the Union’s resolution of the grievance. Indeed, the judicially noticed CBA establishes that, per its terms, it is the Union (not Plaintiff) that controlled the grievance process and had the absolute right choose to either settle the grievance on terms the Union found acceptable or to arbitrate the dispute if the Union believed no acceptable settlement could be reached. Ultimately, the Union settled to resolve the grievance and obtain reinstatement of Plaintiff’s employment post-suspension, and elected not to arbitrate. That is why Plaintiff was offered the Last Chance Agreement. As such, the Last Chance Agreement was offered to resolve a CBA grievance, and Plaintiff’s claims here necessarily contest how her union grievances were resolved. Plaintiff is preempted from contesting the substantive outcome of the grievance process here.

Furthermore, section 301 of the LMRA preempts a state law claim which would require interpretation of the CBA. (Burnside v. Kiewit Pacific Corp. (9th Cir. 2007). 491 F.3d 1053, 1059.)

Here, Plaintiff’s retaliation claims are predicated, at least in part, on the alleged requirement that the Reinstatement and Release Offer be signed in connection with this grievance process under the CBA. (Allis-Chalmers Corp. v. Lueck (1985) 471 U.S. 202, 218 (“Because the right asserted not only derives from the contract, but is defined by the contractual obligation ... any attempt to assess liability...will involve contract interpretation”) Moreover, as set forth in Defendant’s motion, Plaintiff identifies a number of alleged adverse actions which fall within the scope of the CBA. (See Chart, 9: 6-17.) To determine if any of the alleged conduct constituted cognizable adverse employment actions and/or were based on legitimate non-retaliatory factors, the Court

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would have to “determine whether [the company] was acting consistently with its duties under the CBA ... by interpreting [its] provisions.” (Perugini v. Safeway Stores, Inc. (9th Cir. 1991) 935 F.2d 1083, 1088; Hyles v. Mensing (9th Cir. 1988) 849 F.2d 1213, 1216.) As such, the Court finds that adjudication of the challenged causes of action would require interpretation of the CBA, and thus are also preempted under the LMRA.

In opposition, Plaintiff disputes that her claims would depend upon, or require interpretation of, the CBA. However, Plaintiff contends that the Last Chance Agreement she was offered was illegal. The Last Chance Agreement was her Union’s proposed resolution of her grievance:

Further, like the CBA, these documents reveal that the Last Chance Agreement that Plaintiff contends is illegal was her Union’s proposed resolution of her grievance. In particular, they show that Plaintiff believed that she “was unjustly disciplined” and, in submitting her grievance, acknowledged that her “Union shall have the exclusive authority to interpret and enforce the collective bargaining contract” and also “the exclusive authority to submit grievances to arbitration, withdraw grievances, settle and compromise grievances and decline to invoke the grievance procedure of a collective bargaining contract.” RJN, Exs. B-C

These documents also reveal that it was the Union who secured the allegedly offending Last Chance Agreement with which Plaintiff takes issue. First, the Union was a party to the proposed agreement – there is a signature line for the Union on the Agreement and it explicitly states “This Agreement, by and between The Vons Companies, Inc. (the “Employer”), UFCW Local No. 770 (the “Union”) and Delfina Leytte, EMP ID# 6332269 (the “Grievant”) concerns the conditions upon which the grievant shall be returned to work”. RJN, Ex. C. Second, the Agreement was not only with Vons nor did it only benefit Vons; rather, it required that Plaintiff release any claims against the Union and “acknowledge[] that she has been fully and fairly represented in this matter by the Union Local”. Id. (emphasis added). Third, and finally, after securing the Last Chance Agreement, the Union noted that it would be “closing [Plaintiff’s] file” after learning that Plaintiff “declined to sign the Settlement and Release Agreement.” RJN, Exs. C-D.

Again, all this makes plain what happened and how Plaintiff’s first, second, tenth, and eighteenth causes of action do, in fact, improperly take issue with how her Union decided to resolve her CBA grievance.

(Reply, 6: 8- 7:3.)

Based on the foregoing, Defendant’s demurrer to the first, second, tenth, and eighteenth causes

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of action is sustained, without leave to amend.

It is so ordered.

The Demurrer - without Motion to Strike filed by The Vons Companies on 07/21/2023 is Sustained without Leave to Amend.

Final Status Conference and Trial dates remain as currently set.

Counsel are reminded the current trial date is firm.

Notice is waived.

PROOF OF SERVICE

CASE NAME: DELFINA LEYTTE- ARRIETA v. THE VONS COMPANIES, INC.

CASE NO.: 22STCV38208

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 S. Grand Avenue, Suite 2900, Los Angeles, CA 90071.

On **August 21, 2023**, I served the following document(s) **NOTICE OF ENTRY OF JUDGMENT OR ORDER** by the method indicated below:

☒ **VIA ELECTRONIC MAIL:**

by transmitting via email to the parties at the email addresses listed below:

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ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT
MONABELL MARTINEZ

☒ **STATE:**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 21, 2023**, at Los Angeles, California.


BRITTANY M. HERNANDEZ