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 DELFINA LEYTTE-ARRIETA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DELFINA LEYTTE-ARRIETA, an individual,

Plaintiff,

vs.

THE VONS COMPANIES, INC., a Michigan
 corporation; and MONABELL MARTINEZ
 DOES 1 – 100, inclusive,

Defendant.

Case No.: **22STCV38208**

PLAINTIFF'S COMPLAINT FOR:

- 1. Retaliation (FEHA)**
- 2. Retaliation (Labor Code § 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 Violation of Public Policy**
- 10. Waiver of Rights, Forums, or Procedures and Release of Claims (Gov. Code, §§ 12953 and 12964.5 and Cal. Labor Code § 432.6)**
- 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**
- 18. Civil penalties pursuant to the Private Attorneys General Act**

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

GENERAL INTRODUCTORY ALLEGATIONS

1. Plaintiff is DELFINA LEYTTE-ARRIETA (also referred to as “Plaintiff” or “Ms. Leytte”). At all times, Plaintiff was a resident of the City of Glendale in the Los Angeles County, California.

2. Ms. Leytte is informed and believes, and based thereon alleges, that Defendant THE VONS COMPANIES, INC (hereafter “VONS”) is a corporation duly organized under the laws of the State of Michigan, duly qualified under the laws of the State of California to conduct business within the State of California and conducts business within the State of California.

3. Defendant Monabell Martinez (hereafter “Ms. Martinez”) is an individual residing in California, who was an employee for Defendant VONS in the City of Glendale, Los Angeles County, California at all times relevant to this Complaint.

4. Ms. Leytte was employed by VONS from Fall 2020 through about February 25, 2022, when Ms. Leytte was suspended without pay and prohibited from returning to work unless she would agree to sign a release as a condition of continued employment.

5. The grounds of this action are multiple illegal employment practices giving rise to the following:

a. Causes of action for harassment, discrimination, including under the Fair Employment Housing Act (FEHA), failure to prevent the same, and ultimately retaliation for complaining about the harassment and discrimination, and other violations.

b. Causes of action for multiple violations of various wage/hour and related laws which deprived Ms. Leytte of employment benefits and rights mandated under California law.

c. Unlawful business practice claims related to Defendants' unlawful employment practices.

d. An action brought by Ms. Leytte under the Private Attorneys General Act (Lab. Code §§ 2698 – 2699.6) for violations of various California employment wage/hour laws.

6. Ms. Leytte brings this action against VONS, alter egos, agents, and other persons/entities engaged with Defendants in a joint enterprise of providing grocery services.

7. VONS was the employer of Ms. Leytte referenced herein providing grocery

1 services via storefront locations in the State of California including, but not limited to VONS
2 located at 561 N Glendale Ave., Glendale, CA 91206-3307.

3 8. DOES 1 through 100 are unidentified persons or entities who are legally
4 responsible in some actionable manner for the illegal acts and omissions complained of herein.
5 To the extent said Defendants are a business entity, the form of said Defendants is unknown at
6 the present time.

7 9. Each of the above Defendants had authority to set policies, procedures, and
8 practices as well as the authority to hire, transfer, promote, assign, reward, discipline the workers
9 working at and/or to effectively recommend said actions. Additionally, said Defendants also had
10 responsibility to act on employee grievances and/or to effectively recommend action on employee
11 grievances, including but not limited to Ms. Leytte's. These Defendants also had the responsibility
12 to direct Ms. Leytte and other aggrieved employees' daily work activities at each VONS' principal
13 place of business. The exercise of said authority and responsibility by said Defendants required
14 the use of independent judgment of all said Defendants.

15 10. On information and belief, VONS and each DOE Defendant that was a business
16 entity or organization at the relevant times herein, has been and continues to be a privately-owned
17 business authorized to do business in the State of California.

18 Agency Relationship Allegation

19 11. Ms. Leytte believes and therefore alleges that at all times herein mentioned, each
20 of the Defendants was the agent and employee of each of the other Defendants, and in doing the
21 acts alleged herein, was acting within the scope of such agency and employment. Ms. Leytte
22 further believes and therefore alleges that conduct of each of the Defendants as alleged herein
23 was ratified by each of the other Defendants, and the benefits thereof were accepted by each of
24 the other said Defendants.

25 General Allegations re Fictitious DOE Defendants

26 12. The facts linking the fictitiously designated Defendants with the causes of action
27 alleged herein and/or the true names and capacities, whether individual, corporate, partnership,
28 or otherwise of Defendants, DOES 1 through 100, are unknown to Ms. Leytte(s) at this time, who

1 therefore sue said Defendants by such fictitious names and will seek to amend this Complaint to
2 show their true names and/or capacities when ascertained. Said Defendants are sued as employers,
3 principals and/or agents, servants, and/or employees of said employers or principals who were
4 performing acts within the course and scope of their authority and/or employment. Each and every
5 Defendant designated herein as a “DOE” is responsible in some actionable manner for the events
6 and happenings referred to herein which proximately caused the injuries, damages, losses and/or
7 penalties as alleged herein.

8 **FACTUAL ALLEGATIONS**

9 13. In the Fall of 2020, Ms. Leytte, a 72-year-old California resident, began her
10 employment for VONS in Glendale, California, working approximately forty (40) hours per week
11 and making \$15.00 per hour.

12 14. From the very beginning, Defendants set up Ms. Leytte for failure. Defendants
13 subjected Ms. Leytte to nonstop harassment, discriminated against her on the basis of her religion,
14 decreased her wage rate by nearly 10%, and counseled her for virtually all aspects of her job
15 performance, no matter how well she performed at work.

16 15. For example, in the Fall of 2020 through Winter of 2020, Ms. Leytte’s wage rate
17 was \$15.00 per hour, while working at the Panda Express within the Vons store. After discovering
18 that Ms. Leytte believes, practices, and proselytizes the Mormon religion, Ms. Leytte’s Panda
19 Express Supervisor, had Ms. Leytte’s position changed to the cleaning department and her pay
20 rate was decreased to \$14.30 per hour.

21 16. Effectively, Ms. Leytte was demoted and discriminated against on the basis of her
22 religious creed and religious practice: Both are protected characteristics under the FEHA.

23 17. In May of 2021, Miss Eva, her new supervisor, required Ms. Leytte to fetch and
24 return every shopping cart in the parking lot. That day, Ms. Leytte suffered an acute injury due to
25 Miss Eva’s demands. Consequently, Ms. Leytte was in severe pain. This severely impacted Ms.
26 Leytte’s health. Shortly thereafter, Ms. Leytte received medical treatment. As a result, Ms. Leytte
27 also filed a workers compensation claim to redress her injuries.

1 18. After her injury, Ms. Leytte's workplace environment changed, in at least two
2 main ways:

3 19. First, Ms. Leytte's hours were significantly reduced without explanation, as
4 although she had some medical restrictions, she was still able to perform her duties; and even if
5 she was not able to perform some duties, no one from VONS engaged with Ms. Leytte to discuss
6 what jobs she could perform while under medical restrictions. Even as her injuries improved over
7 time, Ms. Leytte would never be given the hours she was used to working prior to reporting her
8 on-work injury, and despite Ms. Leytte bringing this issue up with her superiors, she was never
9 provided an explanation for the reduction in hours.

10 20. Second, Ms. Leytte began receiving harassing comments from multiple
11 employees, including being yelled at in front of customers, aggressively confronting Ms. Leytte,
12 counseling Ms. Leytte for petty matters, and forcing Ms. Leytte into working overtime without
13 pay. Ms. Leytte complained to her store director and other supervisors, including Supervisor Janet
14 Rosales, Heber Gonzalez, who on information and belief was at that time a store assistant
15 manager, and Steven Brazauskas. Yet, nothing was ever done to prevent the harassment; in fact,
16 although Ms. Leytte was asked on multiple occasions to write up her specific complaints, and she
17 did, no one ever addressed those complaints. Ms. Leytte's complaints were essentially ignored,
18 allowing her harassment to continue.

19 21. One of the employees that particularly engaged in harassing behavior towards Ms.
20 Leytte was Ms. Martinez. Ms. Martinez's behavior included but was not limited to, inexplicably
21 asking Ms. Leytte to remain at work after clocking out – promising to correct her clock out time
22 but instead forcing Ms. Leytte to seek help correcting her true clock out time; yelling at Ms. Leytte
23 in front of customers; inexplicably following Ms. Leytte around the store to police how she was
24 performing her duties; aggressively confronting Ms. Leytte about her clocking in or clocking out
25 despite Ms. Martinez not being her direct supervisor; falsely accusing Ms. Leytte of spraying
26 customers with disinfectant while she was cleaning and there were no customers around; and
27 generally being demeaning and disrespectful towards Ms. Leytte when alone and in front of
28 others, including customers.

1 22. In early February of 2022, after having complained again, this time directly to
2 Steven Brazauskas, about the ongoing and persistent harassing treatment from Ms. Martinez, Mr.
3 Brazauskas again asked Ms. Leytte to submit her complaint in writing. Even though Ms. Leytte
4 suspected he would continue to ignore her complaints – whether orally or in writing, Ms. Leytte
5 submitted a written grievance pursuant to Mr. Brazauskas’ request on or about February 8, 2022.
6 However, this time Ms. Leytte submitted her grievance to Mr. Brazauskas as well as to Associate
7 Relations Manager Gregg Rutkin and Ms. Leytte’s Union Representative Dina Weston. Her
8 grievance detailed several examples of how her workplace environment had become really painful
9 to bear, and explaining that Ms. Leytte felt she was being consistently harassed, belittled, and
10 treated differently.

11 23. More than two weeks past and neither Mr. Brazauskas nor anyone else at VONS
12 discussed her grievance with Ms. Leytte, all the while Ms. Martinez’s harassing behavior
13 continued. Ms. Leytte again approached Mr. Brazauskas about the status of her complaint, and
14 asked if he had reviewed her written complaint that was submitted weeks earlier; he said he had
15 not seen the letter despite having received it. At that moment, Ms. Leytte again expressed how
16 she was already stressed knowing that Ms. Martinez was at the store, how she felt he was not
17 doing anything to address the situation. Ms. Leytte finally inquired whether Mr. Brazauskas was
18 taking Ms. Martinez’s side, and he quickly responded no and walked away.

19 24. The next day, on or about February 25, 2022, Mr. Brazauskas ordered a meeting
20 with Ms. Leytte. The meeting took place between Mr. Brazauskas, a VONS employee named
21 Lisa, and Ms. Leytte. There, Mr. Brazauskas informed Ms. Leytte that she was being suspended.
22 Ms. Leytte was commanded to leave the store. She was chaperoned and escorted out by Lisa.

23 25. Ms. Leytte was suspended indefinitely without pay and benefit entitlements.

24 26. That same day, Ms. Leytte called Dina Weston, her Union representative. A week
25 later, a meeting was held with Mr. Brazauskas, Dina Weston, and Greg Rutkin, but none of Ms.
26 Leytte’s concerns were addressed. Instead, during the meeting, Ms. Leytte was given an illusory
27 promise to be reinstated and allowed to return to work at a different store. Unbeknownst to Ms.
28

1 Leytte, VONS would condition her continued employment on her releasing her claims for her
2 complaints of discrimination, harassment, retaliation, and other claims.

3 27. A week after that meeting, a document entitled “Compromise and Release
4 Settlement Agreement” (the “Release”) was sent to Ms. Leytte, and Ms. Leytte was informed for
5 the first time that her continued employment was conditioned on her signing the Release.

6 28. The Release was presented on a take it or leave it basis. The Release provided that
7 if and only if Ms. Leytte relinquishes VONS from any legal action, through executing the Release,
8 Ms. Leytte could continue her employment; apparently, without her signing the Release, Ms.
9 Leytte would remain indefinitely suspended, thus essentially terminated.

10 29. Ms. Leytte refused to sign the Release and was informed that she was not allowed
11 to return to work unless she did so. Despite being suspended without pay since February 25, 2022,
12 Ms. Leytte did not receive a final paycheck until May of 2022.

13 30. On information and belief, VONS regularly and as a matter of standard practice
14 and policy suspends, discharges, or expels, or otherwise discriminates against its employees that
15 complain of payment of wages; similarly, VONS regularly and unlawfully removes employees
16 that complain of discriminatory practices; and more generally, VONS regularly and unlawfully
17 removes employees that complain of any perceived unlawful treatment employees are subjected
18 to during their course of employment with VONS. Instead of addressing its employees’ concerns
19 or genuinely investigating their claims, VONS invokes the unlawful, company-wide practice of
20 suspending employees (without pay) upon receipt of their complaints alleging unlawful treatment
21 or practices by VONS, and systematically conditions their continued employment (i.e., lifting of
22 their unpaid suspension) on their execution of an agreement to a demotion and or a waiver and
23 release of any and all claims the aggrieved employee was complaining about to VONS in the first
24 place. Therefore, VONS ratifies the actions of its employees in furtherance of its unlawful
25 oppressive policy, and as such Ms. Leytte is entitled to punitive damages.

26 31. Accordingly, Defendants have violated California Laws, the FEHA, and the
27 California Labor Code for Defendants’ multiple illegal employment practices, which deprived
28 Ms. Leytte and other similarly aggrieved employees of their rights and employment benefits.

1 32. Prior to the filing of this Complaint, on December 7, 2022, Plaintiff received her
2 right to sue letter from the Department of Fair Employment & Housing (DFEH) after submitting
3 her complaint including a statement of facts mirroring the statement of facts in this Complaint.
4 Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance
5 with administrative requirements, and received a right-to-sue letter (attached as **EXHIBIT A**).

6 33. Prior to the filing of this Complaint, and pursuant to Labor Code § 2699.3, Ms.
7 Leytte provided written notice to the Labor and Workforce Development Agency (“LWDA”),
8 and paid the required fee, and sent the written notice by U.S. certified mail to Defendant of the
9 specific provisions of the Labor Code alleged to have been violated and the facts and theories to
10 support the alleged violations. These notices were sent on June 7, 2022. The LWDA did not
11 respond to the notice within sixty-five calendar days. Moreover, on August 19, 2022, Ms. Leytte
12 amended her notice to the LWDA and sent a copy to of the same by U.S. certified mail to
13 Defendant VONS. The LWDA did not respond to the notice within sixty-five calendar days.
14 Thus, under Labor Code § 2699.3(a)(2)(C), Ms. Leytte is permitted to commence a civil action
15 pursuant to Labor Code § 2699.

16 34. Accordingly, Ms. Leytte exhausted all of her administrative remedies.

17
18 **FIRST CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF FEHA**
19 **AGAINST DEFENDANT VONS**

20 35. Ms. Leytte restates and incorporates each and every allegation of the foregoing
21 paragraphs as though fully set forth herein.

22 36. As used in this Cause of Action, “Defendant” means VONS.

23 37. Ms. Leytte was an “employee” of VONS as that term is defined in Code Regs. tit.
24 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

25 38. VONS regularly employs five (5) or more persons. Thus, Vons is an “employer”
26 as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

27 39. California Gov’t. Code § 12940(h), which is part of the Fair Employment and
28 Housing Act (hereafter “FEHA”), makes it unlawful, “[f]or any employer, labor organization,

1 employment agency, or person to discharge, expel, or otherwise discriminate against any person
2 because the person has opposed any practices forbidden under this part or because the person has
3 filed a complaint, testified, or assisted in any proceeding under this part.”

4 40. At all times relevant to this complaint, Gov’t. Code § 12940(h) was in effect and
5 applicable to VONS.

6 41. When Ms. Leytte complained about harassing and discriminatory behavior, she
7 was engaging in legally protected activity covered by Gov’t. Code § 12940(h), and thus was
8 protected from employer retaliation. Similarly, Ms. Leytte’s filing of her worker’s compensation
9 claim as well as her refusal to sign the Release constituted protected activity.

10 42. Ms. Leytte is informed and believes, and thereon alleges, that her complaints of
11 VONS’ unlawful activity motivated the retaliation she suffered. As a result of Ms. Leytte’s
12 complaints about harassment and discrimination, and refusal to sign the Release, VONS subjected
13 her to adverse employment actions. Such adverse employment actions included but were not
14 limited to denial of professional opportunities; denial of a reasonable accommodation; negative
15 performance reviews; disciplinary write-ups; forced transfers to less desirable assignments or
16 locations; conditioning Ms. Leytte’s continued employment on releasing her claims against
17 VONS; constructive discharge and or termination.

18 43. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
19 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte
20 claims such amount as general damages for mental and emotional distress and aggravation in an
21 amount to be proven at time of trial, together with pre-judgment interest pursuant to Civil Code
22 § 3287 and/or any other provision of law providing for pre-judgment interest.

23 44. In addition to such other damages as may properly be recovered herein, Ms. Leytte
24 is entitled to an award of punitive damages in an amount to be proven at trial, along with
25 reasonable attorneys’ fees, pursuant to Gov’t. Code § 12965(b). Moreover, Ms. Leytte is also
26 entitled to attorney’s fees pursuant to Cal. Code of Civil Procedure 1021.5.

27
28 **SECOND CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF CAL.**

LABOR CODE § 1102.5 AGAINST DEFENDANT VONS

45. Ms. Leytte restates and incorporates each and every allegation of the foregoing paragraphs as though fully set forth herein.

46. As used in this Cause of Action, “Defendant” means VONS.

47. At all times relevant to this complaint, Labor Code § 1102.5 was in effect and applicable to VONS. Labor Code § 1102.5 states that “an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

48. Here, Ms. Leytte consistently reported to VONS about her complaints in the workplace. Moreover, Ms. Leytte refused to participate in an activity that would result in a violation of state or federal statute when she refused to sign the Release as a condition of her continued employment.

49. Ms. Leytte is informed and believes, and thereon alleges, that her complaints of VONS’ unlawful activity motivated the retaliation she suffered. As a result of Ms. Leytte’s complaints about harassment and discrimination, and refusal to sign the Release, VONS subjected her to adverse employment actions. Such adverse employment actions included but were not limited to denial of professional opportunities; denial of a reasonable accommodation; negative performance reviews; disciplinary write-ups; forced transfers to less desirable assignments or locations; conditioning Ms. Leytte’s continued employment on releasing her claims against VONS; constructive discharge and or termination.

50. As a result of the aforesaid acts of VONS, Ms. Leytte claims general damages for mental and emotional distress and aggravation in an amount to be proven at trial.

51. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte claims such amount as general damages for mental and emotional distress and aggravation in an amount to be proven at time of trial, together with pre-judgment interest pursuant to Civil Code § 3287 and/or any other provision of law providing for pre-judgment interest.

1 52. As a proximate result of the foregoing conduct of VONS, which violated the
2 provisions of Labor Code § 1102.5, Ms. Leytte has been forced to incur and will continue to incur
3 attorney's fees and costs in the litigation of this claim in an amount to be proven at trial.

4
5 **THIRD CAUSE OF ACTION FOR HARASSMENT IN VIOLATION OF FEHA**
6 **AGAINST ALL DEFENDANTS**

7 53. Ms. Leytte restates and incorporates each and every allegation of the foregoing
8 paragraphs as though fully set forth herein.

9 54. As used in this Cause of Action, "Defendants" means all Defendants.

10 55. VONS regularly employs five (5) or more persons. Thus, VONS is an "employer"
11 as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

12 56. At all times relevant to this Complaint, Government Code § 12940(j) was in effect
13 and applied to Defendants. This code makes it unlawful for an employer or any other person to
14 harass an employee.

15 57. Ms. Leytte was an "employee" of Defendants as that term is defined in Code Regs.
16 tit. 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

17 58. An employee (supervisor or coworker) who harasses another employee may be
18 held personally liable under California law regardless of the employer's liability: "An employee
19 ... is personally liable for any harassment prohibited by this section that is perpetrated by the
20 employee, regardless of whether the employer ... knows or should have known of the conduct
21 and fails to take immediate and appropriate corrective action." Gov.C. § 12940(j)(3).

22 59. Here, Defendants incessantly harassed Ms. Leytte: They subjected her to unlawful
23 and otherwise discriminatory treatment. Defendants' work environment was hostile and abusive
24 and would be considered offensive and intolerable by any reasonable person under similar
25 circumstances.

26 60. Ms. Leytte has incurred and continues to incur costs and attorneys' fees and is
27 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
28 12965. Ms. Leytte is also entitled to attorney's fees pursuant to Cal. Code of Civil Procedure

1021.5.

61. As a direct and foreseeable result of the aforesaid acts of Defendants, Ms. Leytte has lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte claims such amount as general damages for mental and emotional distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

**FOURTH CAUSE OF ACTION FOR DISCRIMINATION BASED ON RELIGION IN
VIOLATION OF FEHA AGAINST DEFENDANT VONS**

62. Ms. Leytte restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

63. As used in this Cause of Action, “Defendant” means VONS.

64. VONS regularly employs five (5) or more persons. Thus, VONS is an “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

65. Ms. Leytte was an “employee” of VONS as that term is defined in Code Regs. tit. 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

66. At all times relevant to this Complaint, Government Code § 12940(k) was in effect and applied to VONS. This code makes it unlawful for an employer to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

67. Ms. Leytte had sincerely held religious beliefs. Defendants were aware of Ms. Leytte 's sincerely held religious beliefs.

68. At this juncture, Ms. Leytte was subjected to discrimination in the workplace. Ms. Leytte 's discrimination was based on her religion, and/or for engaging in protected activities. Ms. Leytte was mistreated and ultimately wrongfully terminated under circumstances indicating discriminatory motive based on her religion.

69. As a direct and proximate result of Defendants’ unlawful conduct, Ms. Leytte has experienced and will continue to experience pain and suffering, mental anguish, emotional distress, and loss of earnings and other employment benefits. Ms. Leytte is thereby entitled to

1 general and compensatory damages in amounts to be proven at the time of trial, together with pre-
2 judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-
3 judgment interest.

4 70. As set forth above, Defendant acted with conscious disregard of Ms. Leytte 's
5 rights. Defendants acted with the malicious intention of depriving Ms. Leytte of the opportunities
6 and benefits of her employment because of her religion. This conduct was and is despicable, cruel,
7 and oppressive. Therefore, Ms. Leytte is entitled to an award of punitive damages in an amount
8 to be proven at trial, along with reasonable attorneys' fees, pursuant to Gov't. Code § 12965(b).
9 Ms. Leytte is also entitled to attorney's fees pursuant to Cal. Code of Civil Procedure 1021.5.

10
11 **FIFTH CAUSE OF ACTION FOR AGE DISCRIMINATION IN VIOLATION**
12 **OF FEHA AGAINST DEFENDANT VONS**

13 71. Ms. Leytte restates and incorporates by reference each and every allegation of the
14 foregoing paragraphs as though fully set forth herein.

15 72. For purposes of this Cause of Action, "Defendant" means VONS.

16 73. VONS regularly employs five (5) or more persons. Thus, VONS is an "employer"
17 as that term is defined in Cal. Gov't Code § 12926(d) and subject to the FEHA.

18 74. Ms. Leytte was an "employee" of VONS as that term is defined in Code Regs. tit.
19 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

20 75. Government Code § 12940(a) makes it unlawful for "an employer, because of the
21 ...age...of any person, to refuse to hire or employ the person or to refuse to select the person for
22 a training program leading to employment, or to bar or to discharge the person from employment
23 or from a training program leading to employment, or to discriminate against the person in terms,
24 conditions, or privileges of employment."

25 76. In other words, under the FEHA, it is an unlawful employment practice for an
26 employer because of a person's age, to refuse to hire or employ the person, to refuse to select the
27 person for a training program leading to employment, to bar or discharge the person from
28 employment or from a training program leading to employment, or to discriminate against the

1 person in compensation or in terms, conditions, or privileges of employment. It is unlawful under
2 FEHA for any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden
3 under FEHA, or to attempt to do so. It is unlawful, under the FEHA Government Code section
4 12900 et seq., for an employer to fail to take all reasonable steps necessary to prevent
5 discrimination and harassment based on an employee's age.

6 77. VONS discriminated against and retaliated against Ms. Leytte as to the terms,
7 conditions, and privileges of employment, and committed adverse employment actions against
8 Ms. Leytte, as stated below, all in violation of the FEHA.

9 78. Ms. Leytte's age was 72 at the time of the ending of Ms. Leytte employment with
10 VONS.

11 79. Ms. Leytte's age was a substantial motivating factor in VONS' aforementioned
12 decisions that were averse to Ms. Leytte in regard to compensation and terms, conditions, and
13 privileges of employment, as stated above.

14 80. At all times mentioned in this complaint, Ms. Leytte performed work for VONS
15 competently and in a satisfactory manner.

16 81. VONS knew, perceived, and/or believed that Ms. Leytte had the aforementioned
17 protected status, described hereinabove.

18 82. The conduct of VONS as described above was malicious, fraudulent, oppressive,
19 done with reckless indifference, and/or done with a willful and conscious disregard for Ms.
20 Leytte's rights and for the deleterious consequences of VONS' actions. VONS and their
21 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct
22 of each other. Consequently, Ms. Leytte is entitled to punitive damages against VONS.

23 83. As a direct and proximate result of Defendants' unlawful conduct, Ms. Leytte has
24 experienced and will continue to experience pain and suffering, mental anguish, emotional
25 distress, and loss of earnings and other employment benefits. Ms. Leytte is thereby entitled to
26 general and compensatory damages in amounts to be proven at the time of trial, together with
27 pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing
28 for pre-judgment interest.

1 84. As a direct and proximate result of VONS' unlawful conduct, Ms. Leytte has
2 suffered and will continue to suffer pain and anguish, emotional distress, and loss of earnings
3 and other employment benefits. Ms. Leytte is thereby entitled to general and compensatory
4 damages in amount to be proven at trial. Furthermore, Ms. Leytte has incurred and continues
5 to incur costs and attorneys' fees and is entitled to an award of his reasonable attorneys' fees
6 and costs pursuant to Cal. Gov't. Code § 12965(b). Ms. Leytte is also entitled to attorney's
7 fees pursuant to Cal. Code of Civil Procedure 1021.5.

8
9 **SIXTH CAUSE OF ACTION FOR DISABILITY DISCRIMINATION IN VIOLATION**
10 **OF FEHA BY PLAINTIFF AGAINST DEFENDANT VONS**

11 85. Ms. Leytte restates and incorporates by reference each and every allegation of the
12 foregoing paragraphs as though fully set forth herein.

13 86. For purposes of this Cause of Action, "Defendant" means VONS.

14 87. On information and belief, VONS regularly employ five (5) or more persons.
15 Thus, VONS is an employer as that term is defined in in Cal. Gov't. Code § 12926(d) and subject
16 to the Fair Employment and Housing Act (hereafter "the FEHA").

17 88. Ms. Leytte was an employee of VONS as that term is defined in Cal. Code Regs.
18 tit. 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

19 89. Government Code § 12940(a) makes it unlawful for "an employer, because of the
20 ... physical disability, mental disability, medical condition ... of any person, to refuse to hire or
21 employ the person or to refuse to select the person for a training program leading to employment,
22 or to bar or to discharge the person from employment or from a training program leading to
23 employment, or to discriminate against the person in compensation or in terms, conditions, or
24 privileges of employment."

25 90. VONS knew Ms. Leytte suffered from a medical condition as a result of her
26 injuries sustained during the course of her employment.

27 91. Despite this, VONS reduced her work hours, suspended Ms. Leytte without pay
28 and effectively terminated Ms. Leytte, changed the conditions of her employment, and altered the

1 privileges of employment.

2 92. As a direct and proximate result of Defendants' unlawful conduct, Ms. Leytte has
3 experienced and will continue to experience pain and suffering, mental anguish, emotional
4 distress, and loss of earnings and other employment benefits. Ms. Leytte is thereby entitled to
5 general and compensatory damages in amounts to be proven at the time of trial, together with pre-
6 judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-
7 judgment interest.

8 93. As a direct and proximate result of VONS' unlawful conduct, Ms. Leytte has
9 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and
10 loss of earnings and other employment benefits. Ms. Leytte is thereby entitled to general and
11 compensatory damages in amount to be proven at trial. Furthermore, Ms. Leytte has incurred and
12 continues to incur costs and attorneys' fees and is entitled to an award of his reasonable attorneys'
13 fees and costs pursuant to Cal. Gov't. Code § 12965(b). Ms. Leytte is also entitled to attorney's
14 fees pursuant to Cal. Code of Civil Procedure 1021.5.

15 94. The conduct of VONS as described above was malicious, fraudulent, oppressive,
16 done with reckless indifference, and/or a willful and conscious disregard for Ms. Leytte's rights
17 and for the deleterious consequences of VONS' actions. VONS and their agents/employees or
18 supervisors authorized, condoned, and/or ratified the unlawful conduct of each other.
19 Consequently, Ms. Leytte is entitled to punitive damages against VONS.

20
21 **SEVENTH CAUSE OF ACTION FOR FAILURE TO ENGAGE IN THE**
22 **INTERACTIVE PROCESS (FEHA) AGAINST DEFENDANT VONS**

23 95. Ms. Leytte restates and incorporates by reference each and every allegation of the
24 foregoing paragraphs as though fully set forth herein.

25 96. For purposes of this Cause of Action, "Defendant" means VONS.

26 97. On information and belief, VONS regularly employs five (5) or more persons.
27 Thus, VONS is an "employer" as that term is defined in in Cal. Gov't. Code § 12926(d) and
28 subject to the Fair Employment and Housing Act.

1 98. Ms. Leytte was an “employee” of VONS as that term is defined in Cal. Code Regs.
2 tit. 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

3 99. Government Code § 12940(n) makes it unlawful for “an employer or other entity
4 covered by this part to fail to engage in a timely, good faith, interactive process with the employee
5 or applicant to determine effective reasonable accommodations, if any, in response to a request
6 for reasonable accommodation by an employee or applicant with a known physical or mental
7 disability or known medical condition.”

8 100. The conduct of VONS as described above was malicious, fraudulent, oppressive,
9 done with reckless indifference, and/or done with a willful and conscious disregard for Ms.
10 Leytte’s rights and for the deleterious consequences of VONS’ actions. VONS, and their
11 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct of
12 each other. Consequently, Ms. Leytte is entitled to punitive damages against VONS.

13 101. As a direct and proximate result of VONS’ unlawful conduct, Ms. Leytte has
14 experienced and will continue to experience pain and suffering, mental anguish, emotional
15 distress, and loss of earnings and other employment benefits. Ms. Leytte is thereby entitled to
16 general and compensatory damages in amounts to be proven at the time of trial, together with pre-
17 judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-
18 judgment interest.

19 102. As a direct and proximate result of VONS’ unlawful conduct, Ms. Leytte has
20 suffered and will continue to suffer pain anguish, and emotional distress, and loss of earnings and
21 other employment benefits. Ms. Leytte is thereby entitled to general and compensatory damages
22 in amounts to be proven at the time of trial. Furthermore, Ms. Leytte has incurred and continues
23 to incur costs and attorneys’ fees and is entitled to an award of his reasonable attorneys’ fees and
24 costs pursuant to Cal. Gov’t. Code § 12965(b). Ms. Leytte is also entitled to attorney’s fees
25 pursuant to Cal. Code of Civil Procedure 1021.5.

26
27 **EIGHTH CAUSE OF ACTION FOR FAILURE TO PREVENT HARASSMENT**
28 **AND DISCRIMINATION AGAINST DEFENDANT VONS**

1 103. Ms. Leytte restates and incorporates by reference each and every allegation of the
2 foregoing paragraphs as though fully set forth herein.

3 104. For purposes of this Cause of Action, “Defendant” means VONS.

4 105. VONS regularly employ five (5) or more persons. Thus, VONS is an “employer”
5 as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

6 106. Ms. Leytte was an “employee” of VONS as that term is defined in Cal. Code Regs.
7 tit. 2, § 11008(c). Thus, Ms. Leytte is protected by the FEHA.

8 107. Under Government Code section 12940(k), it is unlawful for an employer to fail
9 to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

10 108. During Ms. Leytte's employment, VONS failed to prevent the above-referenced
11 acts of discrimination, harassment, and retaliation toward Ms. Leytte in violation of Government
12 Code section 12940(k). VONS' failure to undertake a prompt and adequate investigation and its
13 complete failure to prevent the above-alleged acts of discrimination, harassment, and retaliation
14 constitutes an unlawful employment practice. Such conduct is in violation of the FEHA and has
15 resulted in damages and injury to Ms. Leytte as alleged herein.

16 109. As a further proximate result of VONS' conduct described in this Complaint, Ms.
17 Leytte has incurred and will continue to incur medical expenses in an amount according to proof
18 at the time of trial.

19 110. As a result of the aforementioned acts of VONS, Ms. Leytte claims general
20 damages for mental and emotional distress and aggravation in an amount to be proven at the time
21 of trial.

22 111. In doing the acts herein alleged, VONS, through its officers, directors, and/or
23 managing agents, acted with oppression, fraud, malice, and in the conscious disregard of the rights
24 of Ms. Leytte; therefore, Ms. Leytte is also entitled to punitive damages in an amount according
25 to proof at the time of trial.

26 112. As a direct, foreseeable, and proximate result of VONS' actions, Ms. Leytte has
27 suffered and continues to suffer injuries, substantial losses in earnings and job benefits,
28 humiliation, embarrassment, mental and emotional distress, discomfort, all to Ms. Leytte's

1 damage in an amount over the minimum jurisdiction of this Court, the precise amount of which
2 will be proven at trial. Ms. Leytte claims such amount as damages together with pre-judgment
3 interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-
4 judgment interest.

5 113. Ms. Leytte, who has incurred and continues to incur attorneys' fees and legal
6 expenses, is also entitled to recover said costs and fees in an amount according to proof at the
7 time of trial, pursuant to Government Code section 12965(b). Ms. Leytte is also entitled to
8 attorney's fees pursuant to Cal. Code of Civil Procedure 1021.5.

9
10 **NINTH CAUSE OF ACTION FOR WRONGFUL DISCHARGE IN VIOLATION**
11 **OF PUBLIC POLICY AGAINST DEFENDANT VONS**

12 114. Ms. Leytte incorporates by reference each and every allegation of the foregoing
13 paragraphs as though fully set forth herein.

14 115. For purposes of this Cause of Action, "Defendant" means VONS.

15 116. When an employer's discharge of an employee violates fundamental principles of
16 public policy, the discharged employee may maintain a tort action and recover damages
17 traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.*, (1980) 27 Cal.3d 167,
18 170.) "[T]he cases in which violations of public policy are found generally fall into four
19 categories: (1) refusing to violate a statute; (2) performing a statutory obligation (3) exercising a
20 statutory right or privilege; and (4) reporting an alleged violation of a statute of public
21 importance." (*Gantt*, supra, 1 Cal.4th at pp. 1090-1091, internal citations and footnote omitted,
22 overruled on other grounds in *Green v. Ralee Engineering Co.*, (1998) 19 Cal.4th 66, 80, fn. 6;
23 accord *Stephenson v. Superior Court*, (1997) 16 Cal.4th 880, 889. The acts Defendant VONS,
24 indiscriminating and retaliating against and in terminating the employment of Ms. Leytte were
25 done knowingly, willfully, and in conscious disregard for the rights of Ms. Leytte, thereby
26 entitling Ms. Leytte to punitive damages against Defendant VONS.

27 117. In this case, the discharge of Ms. Leytte violated numerous well-established public
28 policies, including but not limited to the public policies against discrimination and harassment

embodied in the FEHA, the public policy prohibiting retaliation established by Labor Code section 1102.5 and FEHA.

118. Moreover, the termination of Ms. Leytte's employment was in violation of public policy of the State of California, including but not limited to, the well-established public policy embodied in Article 1, Section 8 of the California Constitution, and various statutes, including without limitation, the FEHA.

119. As a direct, foreseeable, and proximate result of VONS' actions, Ms. Leytte has suffered and continues to suffer injuries, substantial losses in earnings and job benefits, humiliation, embarrassment, mental and emotional distress, discomfort, all to Ms. Leytte's damage in an amount over the minimum jurisdiction of this Court, the precise amount of which will be proven at trial. Ms. Leytte claims such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

**TENTH CAUSE OF ACTION FOR WAIVER OF RIGHTS, FORUMS, OR
PROCEDURES AND RELEASE OF CLAIMS AGAINST DEFENDANT VONS (Gov.
Code, §§ 12953 and 12964.5 and Cal. Labor Code § 432.6)**

120. Ms. Leytte realleges and incorporates the other allegations of this Complaint, as though fully set forth herein.

121. For purposes of this Cause of Action, "Defendant" means VONS.

122. Government Code § 12953 defines an unlawful practice as an employer's violation of Section 432.6 of the Labor Code.

123. Section 432.6(a) of the Labor Code states that "[a] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any

1 state agency, other public prosecutor, law enforcement agency, or any court or other governmental
2 entity of any alleged violation.”

3 124. Section 432.6(b) of the Labor Code states that “[a]n employer shall not threaten,
4 retaliate or discriminate against, or terminate any applicant for employment or any employee
5 because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of
6 the California Fair Employment and Housing Act or this code, including the right to file and
7 pursue a civil action or a complaint with, or otherwise notify, any state agency, other public
8 prosecutor, law enforcement agency, or any court or other governmental entity of any alleged
9 violation.”

10 125. Based on information and belief, Ms. Leytte alleges that VONS required Ms.
11 Leytte and other aggrieved employees to waive rights, forums, and/or procedures as a condition
12 of employment, continued employment, or the receipt of any employment-related benefit in
13 violation of Labor Code Section 432.6 and Government Code § 12953.

14 126. Government Code § 12964.5 subsection (a)(1)(A) prohibits “an employer, in
15 exchange for a raise or bonus, or as a condition of employment or continued employment...to
16 require an employee to sign a release of a claim or right under this part.” In engaging in conduct
17 as namely described in the aforementioned paragraphs, Defendant VONS did violate the
18 foregoing code sections.

19 127. Based on information and belief, Ms. Leytte alleges that VONS required Ms.
20 Leytte and other similarly aggrieved employees to sign a release of claims and/or rights as a
21 mandatory condition of employment. VONS also required its Union to waive rights as a
22 mandatory condition of employment for any worker assigned to VONS. These actions violate
23 Government Code §12964.5.

24 128. Ms. Leytte has suffered, and will continue to suffer, economic damages as a direct
25 and proximate result of VONS’ conduct, including, but not limited to, past and future lost
26 earnings, lost earning capacity, and loss of employee benefits, among other things.

27 129. Ms. Leytte has also suffered, and will continue to suffer, non-economic damages
28 as a direct and proximate result of Defendants' conduct, including, but not limited to, shock,

1 embarrassment, humiliation, shame, stress, worry, nervousness, anxiety, inconvenience, sadness,
2 physical and mental pain, and loss of enjoyment of life.

3 130. VONS' conduct in violating Cal. Government Code §§ 12953 and 12964.5 and
4 Cal. Labor Code § 432.6, was committed by its officers, directors, and/or managing agents, and
5 was cruel and unjust, and was intended to cause injury to Ms. Leytte, or was committed by them
6 with a willful and conscious disregard of Ms. Leytte's rights and emotional safety and well-being;
7 and/or was despicable conduct that subjected Ms. Leytte to cruel and unjust hardship in conscious
8 disregard of Ms. Leytte's rights; and/or was committed with the intention to deprive Ms. Leytte
9 of property and/or legal rights and/or otherwise caused him injury, and was, therefore, fraudulent
10 and oppressive. Defendants are therefore liable for punitive damages under Civil Code, § 3294,
11 and as otherwise permitted by law.

12 131. As a direct, foreseeable, and proximate result of VONS' actions, Ms. Leytte has
13 suffered and continues to suffer injuries, substantial losses in earnings and job benefits,
14 humiliation, embarrassment, mental and emotional distress, discomfort, all to Ms. Leytte's
15 damage in an amount over the minimum jurisdiction of this Court, the precise amount of which
16 will be proven at trial. Ms. Leytte claims such amount as damages together with pre-judgment
17 interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-
18 judgment interest. Ms. Leytte is also entitled to attorney's fees pursuant to Cal. Code of Civil
19 Procedure 1021.5.

20
21 **ELEVENTH CAUSE OF ACTION FOR MEAL BREAKS VIOLATIONS**
22 **AGAINST DEFENDANT VONS**

23 132. Ms. Leytte restates and incorporates by reference each and every allegation of the
24 foregoing paragraphs as though fully set forth herein.

25 133. For purposes of this Cause of Action, "Defendant" means VONS.

26 134. At all times relevant to this Complaint, the Wage Order 7-2001 (hereafter "Wage
27 Order") § 11 and Labor Code §§ 512(a) were in effect and applicable to VONS.

28 135. Both Wage Order § 11 and Labor Code § 512(a) state that: an employer shall not

1 employ an employee for a work period of more than five hours without a meal period of no less
2 than thirty minutes, except that if a work period of not more than six hours will complete the
3 day's work, the meal period may be waived by mutual consent of the employer and employee.

4 136. During the relevant statutory time period, VONS systematically, routinely, and
5 willfully failed to permit Ms. Leytte to take uninterrupted, non-captive meal periods of at least
6 thirty minutes for every five hours worked, occurring before the end of the fifth hour of work.

7 137. VONS' failure to provide legally compliant meal periods resulted from the
8 following acts and omissions: suffering or permitting Ms. Leytte to work for longer than
9 five hours without receiving an uninterrupted, non-captive meal period of at least thirty minutes.

10 138. As a direct result, Ms. Leytte has suffered substantial damages in an amount to be
11 proven at trial and is entitled to all appropriate legal remedies provided by the Labor Code and
12 Wage Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of
13 suit.

14 139. For all the days on which Ms. Leytte were denied a valid meal period, they are
15 entitled to seek and do seek from VONS one additional hour of pay at the regular rate of
16 compensation for each workday that a meal period was not provided, pursuant to Wage Order §
17 11 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194, Ms. Leytte is entitled to
18 their attorneys' fees and costs and interest according to proof.

19 140. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
20 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte
21 claims such amount as general damages for mental and emotional distress, aggravation, and
22 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to
23 Civil Code § 3287 and any other provision of law providing for pre-judgment interest. Further,
24 Ms. Leytte is entitled to all appropriate legal remedies provided by the Labor Code and Wage
25 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit
26 pursuant to Labor Code § 218.5.

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2
3 **TWELFTH CAUSE OF ACTION FOR REST BREAKS VIOLATIONS AGAINST**
4 **DEFENDANT VONS**

5 141. Ms. Leytte restates and incorporates by reference each and every allegation
6 of the foregoing paragraphs as though fully set forth herein.

7 142. For purposes of this Cause of Action, “Defendant” means VONS.

8 143. At all times relevant to this Complaint, Wage Order § 12 and Labor Code § 226.7
9 were in effect and applicable to VONS.

10 144. Wage Order § 12 provides: Every employer shall authorize and permit all
11 employees to take rest periods, which insofar as practicable shall be in the middle of each work
12 period. The authorized rest period time shall be based on the total hours worked daily at the rate
13 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

14 145. Labor Code § 226.7 provides that: no employer shall require an employee to work
15 during any rest period mandated by an applicable Wage Order.

16 146. The Court has explained this to mean that “during required rest periods, employers
17 must relieve their employees of all duties and relinquish any control over how employees spend
18 their break time.” *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260.

19 147. During the relevant statutory time period, VONS systematically, routinely, and
20 willfully failed to permit Ms. Leytte to take uninterrupted, non-captive rest periods of at least ten
21 minutes for every four hours worked.

22 148. VONS’ failure to provide legally compliant rest periods resulted from the
23 following acts and omissions: suffering or permitting Ms. Leytte to work for longer than four
24 hours without receiving an uninterrupted, non-captive rest periods of at least ten minutes.

25 149. As a direct result, Ms. Leytte has suffered and continues to suffer substantial
26 damages in an amount to be proven at trial and are entitled to all appropriate legal remedies
27 provided by the Labor Code and the Wage Order, including unpaid wages, liquidated damages,
28 interest, attorneys’ fees, and costs of suit.

1 150. Ms. Leytte is entitled to seek and do seek from Defendants one additional hour of
2 pay at the regular rate of compensation for each workday that a rest period was not provided,
3 pursuant to Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor Code § 1194,
4 Ms. Leytte is entitled to their attorneys' fees and costs and interest according to proof.

5 151. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
6 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte
7 claims such amount as general damages for mental and emotional distress, aggravation, and
8 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to
9 Civil Code § 3287 and any other provision of law providing for pre-judgment interest. Further,
10 Ms. Leytte is entitled to all appropriate legal remedies provided by the Labor Code and Wage
11 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit
12 pursuant to Labor Code § 218.5.

13
14 **THIRTEENTH CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES**
15 **AGAINST DEFENDANT VONS**

16 152. Ms. Leytte restates and incorporates by reference each and every allegation of the
17 foregoing paragraphs as though fully set forth herein.

18 153. For purposes of this Cause of Action, "Defendant" means VONS.

19 154. Ms. Leytte restates and incorporates by reference each and every allegation of the
20 foregoing paragraphs as though fully set forth herein.

21 155. At all times relevant to this Complaint, the Wage Order § 3 and Labor Code §§
22 510 and 1194 were in effect and applicable to VONS.

23 156. Wage Order § 3 states that employees shall not be employed more than eight hours
24 in any workday or more than forty hours in any workweek unless the employee receives one and
25 one-half times his or her regular rate of pay for all hours worked in excess of eight hours up to
26 and including twelve hours in any workday, and for the first eight hours worked on the seventh
27 consecutive day of work in a workweek, and double the employee's regular rate of pay for all
28 hours worked in excess of twelve hours in any workday and for all hours worked in excess of

1 eight hours on the seventh consecutive day of work in a workweek.

2 157. Labor Code § 510 states that: any work in excess of eight hours in one workday
3 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
4 seventh day of work in any one workweek shall be compensated at the rate of no less than one
5 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
6 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
7 In addition, any work in excess of eight hours on any seventh day of a workweek shall be
8 compensated at the rate of no less than twice the regular rate of pay of an employee.

9 158. Labor Code § 1194 states that: any employee receiving less than the legal
10 overtime compensation is entitled to recover the unpaid balance of the full amount of this
11 overtime compensation, including interest, reasonable attorneys' fees, and costs.

12 159. Because Ms. Leytte and other aggrieved employees were working in excess of
13 eight hours in one workday and often for six or even seven days a week, Ms. Leytte and other
14 aggrieved employees were accumulating large amounts of overtime hours, for which VONS were
15 required to pay the overtime premium. VONS failed to do this.

16 160. VONS required Ms. Leytte and other aggrieved employees to work more
17 than eight hours in a 24-hour period but did not pay them overtime. Additionally, Wage
18 Order § 20 provides for civil penalties: In addition to any other civil penalties provided by law,
19 any employer . . . who violates, or causes to be violated, the provisions of this order, shall be
20 subject to the civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
21 pay period during which the employee was underpaid in addition to the amount which is sufficient
22 to recover unpaid wages. (2) Subsequent Violations — \$100.00 for each underpaid employee for
23 each pay period during which the employee was underpaid in addition to an amount which is
24 sufficient to recover unpaid wages. Ms. Leytte is entitled to these civil penalties in an amount to
25 be proven at trial. By violating Wage Order § 3 and Labor Code §§ 510 and 1194, Defendants are
26 liable for Ms. Leytte's reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

27 161. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
28 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte

claims such amount as general damages for mental and emotional distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment interest. Further, Ms. Leytte is entitled to all appropriate legal remedies provided by the Labor Code and Wage Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit pursuant to Labor Code § 218.5.

**FOURTEENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS AGAINST DEFENDANT VONS**

162. Ms. Leytte restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

163. For purposes of this cause of action, "Defendant" means VONS.

164. Labor Code § 226(a) requires an employer to furnish its employees with an accurate itemized statement in writing, showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

165. Under Labor Code § 226, an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with §226(a) is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a subsequently pay period up to a maximum of \$4,000.

166. VONS is required to provide employees with accurate, itemized wage statements starting, among other things, gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period, and the number of hours worked at each hourly rate. Ms. Leytte's time sheets and pay stubs did not include the overtime premium for all overtime hours she had worked, or the time she was legally under VONS' control during her meal and rest periods.

167. As a direct and proximate result of VONS' conduct, Ms. Leytte has been injured by, among other things, not knowing how many hours she worked and at what rates, not being

1 paid all wages due, and being required to file this action to recover her wages and determine the
2 number of hours worked and wages due.

3 168. VONS is in violation of Labor Code § 226(a) and are liable to Ms. Leytte for
4 damages. Ms. Leytte is entitled to recover the damages or penalties provide by Labor Code §
5 226(e), including interest thereon, and reasonable attorney's fees and costs.

6 169. Ms. Leytte is entitled to these civil penalties in an amount to be proven at trial.

7 170. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
8 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte
9 claims such amount as general damages for mental and emotional distress, aggravation, and
10 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to
11 Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

12
13 **FIFTEENTH CAUSE OF ACTION FOR FAILURE TO PAY ALL WAGES DUE**
14 **UPON DISCHARGE AGAINST DEFENDANT**

15 171. Ms. Leytte restates and incorporates by reference each and every allegation of the
16 foregoing paragraphs as though fully set forth herein.

17 172. For purposes of this cause of action, "Defendant" means VONS.

18 173. At all times relevant to this Complaint, Labor Code §§ 201 and 203 were in effect
19 and applicable to Defendant.

20 174. Labor Code § 201 states that if the employee and employer relationship is
21 separated, then the wages earned and unpaid at the time of discharge are due and payable
22 immediately. Yet, despite being effectively terminated since February 25, 2022, Ms. Leytte did
23 not receive a final paycheck until May of 2022.

24 175. VONS terminated Ms. Leytte's employment on or about Spring 2022 and so were
25 required to pay Ms. Leytte all wages earned and unpaid on that date. Ms. Leytte's final paycheck
26 did not include all hours earned, so it failed to comply with the requirement of Labor Code § 201
27 that all outstanding wages be paid on the day of separation. As of August 30, 2022, VONS still
28 have not paid Ms. Leytte those premiums.

1 176. As a direct and foreseeable result of the aforesaid acts of VONS, Ms. Leytte has
2 lost and will continue to lose income and benefits in an amount to be proven at trial. Ms. Leytte
3 claims such amount as general damages for mental and emotional distress, aggravation, and
4 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to
5 Civil Code § 3287 and any other provision of law providing for pre-judgment interest. Further,
6 Ms. Leytte is entitled to all appropriate legal remedies provided by the Labor Code and Wage
7 Order, including unpaid wages, liquidated damages, interest, attorneys' fees, and costs of suit
8 pursuant to Labor Code § 218.5.

9
10 **SIXTEENTH CAUSE OF ACTION FOR FAILURE TO REIMBURSE BUSINESS**
11 **EXPENSES AGAINST DEFENDANT**

12 177. Ms. Leytte restates and incorporates by reference each and every allegation of the
13 foregoing paragraphs as though fully set forth herein.

14 178. For purposes of this cause of action, "Defendant" means VONS.

15 179. Code section 2802(a) provides: "An employer shall indemnify her or her employee
16 for all necessary expenditures or losses incurred by the employee in direct consequence of the
17 discharge of her duties, or of her obedience to the directions of the employer, even though
18 unlawful, unless the employee, at the time of obeying the directions, believed them to be
19 unlawful."

20 180. Defendant failed to reimburse Ms. Leytte for the following expenditures incurred
21 as a result of discharging her duty: cell phone usage and other necessary expenditure and losses
22 incurred by Ms. Leytte in direct consequence for the discharge of her duties.

23 181. Under Code section 2802(c), Ms. Leytte is entitled to recover all reasonable costs,
24 including attorney's fees, incurred in enforcing her rights granted by Section 2802.

25
26 **SEVENTEENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES**
27 **AGAINST DEFENDANT**

28 182. Ms. Leytte restates and incorporates by reference each and every allegation of the

1 foregoing paragraphs as though fully set forth herein.

2 183. For purposes of this cause of action, “Defendant” means VONS.

3 184. VONS’ actions and conduct alleged herein constitute unlawful, unfair, deceptive,
4 and misleading business practices, prohibited by Business & Professions Code §§ 17200 et seq.

5 185. Ms. Leytte is informed and believes, and thereon alleges, that VONS utilized
6 improper, unlawful tortious means to unjustly enrich themselves, and to cause deliberate injury
7 to Ms. Leytte.

8 186. Among other things, Ms. Leytte seeks restitution and a return of all moneys
9 obtained by VONS through their wrongful conduct.

10
11 **EIGHTEENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO**
12 **THE PRIVATE ATTORNEY GENERAL ACT**

13 187. Ms. Leytte restates and incorporates by reference each and every allegation of the
14 foregoing paragraphs as though fully set forth herein.

15 188. In addition to seeking penalties for the Labor Code Violations stated above, Ms.
16 Leytte seeks penalties pursuant to the PAGA for the following:

17 189. Pursuant to Labor Code § 2699.3, Ms. Leytte provided written notice to the Labor
18 and Workforce Development Agency (“LWDA”), and paid the required fee, and sent the written
19 notice by U.S. certified mail to Defendant of the specific provisions of the Labor Code alleged to
20 have been violated and the facts and theories to support the alleged violations. These notices were
21 sent on June 7, 2022. The LWDA did not respond to the notice within sixty-five calendar days.
22 Moreover, on August 19, 2022, Ms. Leytte amended her notice to the LWDA and sent a copy to
23 of the same by U.S. certified mail to Defendant VONS. The LWDA did not respond to the notice
24 within sixty-five calendar days. Thus, under Labor Code § 2699.3(a)(2)(C), Ms. Leytte is
25 permitted to commence a civil action pursuant to Labor Code § 2699.

26 190. Under Labor Code § 2699 (f), “[f]or all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
28 these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one

1 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
2 per pay period for the initial violation and two hundred (\$200) for each aggrieved employee per
3 employee per pay period for each subsequent violation.”

4 191. As alleged herein, Ms. Leytte and similarly aggrieved employees seek, and
5 Defendant is liable for, penalties for the violations of Labor Code, including the following: failure
6 to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order
7 No. 7 § 3; willful failure to pay all wages due to discharged employees in violation of Labor Code
8 §§ 201 and 203; failure to furnish accurate itemized wage statements to employees in violation
9 of Labor Code § 226 and Wage Order No. 7 § 7; failure to provide meal and rest periods in
10 violation of Labor Code §§ 226.7 and 512 and Wage Order No. § 12; Labor Code § 2802 for
11 failure to reimburse all expenses, and violations of Labor Code §§ 98.6 and 1102.5 for retaliatory
12 practices, including but not limited to having a company-wide policy in violation of California
13 Government Code §§ 12953 and 12964.5 and in violation of Labor Code § 432.6.

14 192. Plaintiff and similarly aggrieved employees are entitled to seek all reasonable
15 attorneys’ fees and costs of suit pursuant to Labor Code § 2699(g).

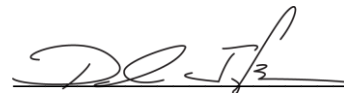
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Ms. Leytte prays for judgment against Defendants, and each of them, as
3 follows:

- 4 1. For compensatory damages, including loss of wages, benefits and other opportunities of
5 employment, according to proof;
- 6 2. For special damages in an amount according to proof;
- 7 3. For mental and emotional distress damages;
- 8 4. For punitive damages in an amount necessary to make an example of and to punish
9 Defendants, and to deter future similar misconduct;
- 10 5. For costs of suit, including attorney's fees as permitted by law, including those available
11 pursuant to Government Code section 12965(b), Labor Code section § 233, and the Code
12 of Civil Procedure section § 1021.5;
- 13 6. For an award of interest, including prejudgment interest, at the legal rate as permitted by
14 law; and
- 15 7. For such other and further relief as the Court deems proper and just under all the
16 circumstances.
- 17
- 18

19 Dated: December 8, 2022

JAFARI LAW GROUP, INC.

20
21 

22 David V. Jafari
23 Saul Acherman
24 Attorneys for Plaintiff
25 DELFINA LEYTTE-ARRIETA
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: December 8, 2022

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
DELFINA LEYTTE-ARRIETA

EXHIBIT “A”



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

December 7, 2022

Saul Acherman
2020 Main St. Suite 350
Irvine, CA 92614

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202212-19074108
Right to Sue: Leytte-Arrieta / The Vons Companies, Inc. et al.

Dear Saul Acherman:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

December 7, 2022

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202212-19074108

Right to Sue: Leytte-Arrieta / The Vons Companies, Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD)) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
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Civil Rights Department



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December 7, 2022

Delfina Leytte-Arrieta
C/O Jafari Law Group - 2020 Main Street Suite 350
Irvine, CA 92614

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202212-19074108
Right to Sue: Leytte-Arrieta / The Vons Companies, Inc. et al.

Dear Delfina Leytte-Arrieta:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective December 7, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing



Civil Rights Department

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DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Delfina Leytte-Arrieta

CRD No. 202212-19074108

Complainant,

vs.

The Vons Companies, Inc.
C/O Reed Smith LLP - 355 S. Grand Avenue, Suite
2900
Los Angeles, CA 90071

Monabell Martinez

,

Respondents

1. Respondent **The Vons Companies, Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Monabell Martinez** individual as Co-Respondent(s).

3. Complainant **Delfina Leytte-Arrieta**, resides in the City of **Irvine**, State of **CA**.

4. Complainant alleges that on or about **December 7, 2022**, respondent took the following adverse actions:

Complainant was harassed because of complainant's religious creed - includes dress and grooming practices, disability (physical or mental), age (40 and over), other.

Complainant was discriminated against because of complainant's religious creed - includes dress and grooming practices, disability (physical or mental), age (40 and over), other and as a result of the discrimination was terminated, denied hire or promotion, reprimanded, suspended, demoted, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments, denied or forced to transfer.

1 **Complainant experienced retaliation** because complainant reported or resisted any form
2 of discrimination or harassment, requested or used a disability-related accommodation and
3 as a result was terminated, denied hire or promotion, reprimanded, suspended, demoted,
4 denied any employment benefit or privilege, denied reasonable accommodation for a
5 disability, other, denied work opportunities or assignments, denied or forced to transfer.

6
7 **Additional Complaint Details:** At all times, Complainant was a resident of the County of
8 Glendale, State of California.

9 Respondent VONS is a corporation duly organized under the laws of the State of Michigan,
10 duly qualified under the laws of the State of California to conduct business within the State
11 of California and conducts business within the State of California.

12 Respondent Martinez is an individual residing in California, who was an employee for
13 Defendant VONS in Glendale County, California at all times relevant to this Complaint.

14 In the Fall of 2020, Complainant, a 72-year-old California resident, began her employment
15 for RESPONDENT VONS in Glendale, California, working approximately forty (40) hours per
16 week and making \$15.00 per hour.

17 From the very beginning, Respondents set up Complainant for failure. Respondents
18 subjected Complainant to nonstop harassment, discriminated against her on the basis of her
19 religion, decreased her wage rate by nearly 10%, and counseled her for virtually all aspects
20 of her job performance, no matter how well she performed at work.

21 For example, in the Fall of 2020 through Winter of 2020, Complainant's wage rate was
22 \$15.00 per hour, while working at the Panda Express within the Respondent Vons store.
23 After discovering that Complainant believes, practices, and proselytizes the Mormon
24 religion, Complainant's Panda Express Supervisor ("Supervisor"), had Complainant's
25 position changed to the cleaning department and her pay rate was decreased to \$14.30 per
26 hour.

27 Effectively, Complainant was demoted and discriminated against on the basis of her
28 religious creed and religious practice: Both are protected characteristics under the FEHA.
In May of 2021, Miss Eva, her new supervisor, required Complainant to fetch and return
every shopping cart in the parking lot. That day, Complainant suffered an acute injury due to
Miss Eva's demands. Consequently, Complainant was in severe pain. This severely
impacted Complainant's health. Shortly thereafter, Complainant received medical treatment.
As a result, Complainant also filed a workers compensation claim to redress her injuries.

After her injury, Complainant's workplace environment changed, in at least two main ways:
First, Complainant's hours were significantly reduced without explanation, as although she
had some medical restrictions, she was still able to perform her duties; and even if she was
not able to perform some duties, no one from RESPONDENT VONS engaged with
Complainant to discuss what jobs she could perform while under medical restrictions. Even
as her injuries improved over time, Complainant would never be given the hours she was
used to working prior to reporting her on-work injury, and despite Complainant bringing this

1 issue up with her superiors, she was never provided an explanation for the reduction in
2 hours.
3 Second, Complainant began receiving harassing comments from multiple employees,
4 including being yelled at in front of customers, aggressively confronting Complainant,
5 counseling Complainant for petty matters, and forcing Complainant into working overtime
6 without pay. Complainant complained to her store director and other supervisors, including
7 Supervisor Janet Rosales, Heber Gonzalez, who on information and belief was at that time
8 a store assistant manager, and Steven Brazauskas. Yet, nothing was ever done to prevent
9 the harassment; in fact, although Complainant was asked on multiple occasions to write up
10 her specific complaints, and she did, no one ever addressed those complaints.
11 Complainant's complaints were essentially ignored, allowing her harassment to continue.
12 One of the employees that particularly engaged in harassing behavior towards Complainant
13 was Respondent Martinez. Respondent Martinez's behavior included but was not limited to,
14 inexplicably asking Complainant to remain at work after clocking out – promising to correct
15 her clock out time but instead forcing Complainant to seek help correcting her true clock out
16 time; yelling at Complainant in front of customers; inexplicably following Complainant around
17 the store to police how she was performing her duties; aggressively confronting
18 Complainant about her clocking in or clocking out despite Respondent Martinez not being
19 her direct supervisor; falsely accusing Complainant of spraying customers with disinfectant
20 while she was cleaning and there were no customers around; and generally being
21 demeaning and disrespectful towards Complainant when alone and in front of others,
22 including customers.
23 In early February of 2022, after having complained again, this time directly to Steven
24 Brazauskas, about the ongoing and persistent harassing treatment from Respondent
25 Martinez, Mr. Brazauskas again asked Complainant to submit her complaint in writing. Even
26 though Complainant suspected he would continue to ignore her complaints – whether orally
27 or in writing, Complainant submitted a written grievance pursuant to Mr. Brazauskas' request
28 on or about February 8, 2022. However, this time Complainant submitted her grievance to
Mr. Brazauskas as well as to Associate Relations Manager Gregg Rutkin and Complainant's
Union Representative Dina Weston. Her grievance detailed several examples of how her
workplace environment had become really painful to bear, and explaining that Complainant
felt she was being consistently harassed, belittled, and treated differently.
More than two weeks past and neither Mr. Brazauskas nor anyone else at RESPONDENT
VONS discussed her grievance with Complainant, all the while Respondent Martinez's
harassing behavior continued. Complainant again approached Mr. Brazauskas about the
status of her complaint, and asked if he had reviewed her written complaint that was
submitted weeks earlier; he said he had not seen the letter despite having received it. At
that moment, Complainant again expressed how she was already stressed knowing that
Respondent Martinez was at the store, how she felt he was not doing anything to address
the situation. Complainant finally inquired whether Mr. Brazauskas was taking Respondent
Martinez's side, and he quickly responded no and walked away.
The next day, on or about February 25, 2022, Mr. Brazauskas ordered a meeting with
Complainant. The meeting took place between Mr. Brazauskas, a RESPONDENT VONS
employee named Lisa, and Complainant. There, Mr. Brazauskas informed Complainant that
she was being suspended. Complainant was commanded to leave the store. She was
chaperoned and escorted out by Lisa.

1 Complainant was suspended indefinitely without pay and benefit entitlements.
That same day, Complainant called Dina Weston, her Union representative. A week later, a
2 meeting was held with Mr. Brazauskas, Dina Weston, and Greg Rutkin, but none of
Complainant's concerns were addressed. Instead, during the meeting, Complainant was
3 given an illusory promise to be reinstated and allowed to return to work at a different store.
Unbeknownst to Complainant, RESPONDENT VONS would condition her continued
4 employment on her releasing her claims for her complaints of discrimination, harassment,
retaliation, and other claims.
5 A week after that meeting, a document entitled "Compromise and Release Settlement
Agreement" (the "Release") was sent to Complainant, and Complainant was informed for the
6 first time that her continued employment was conditioned on her signing the Release.
7 The Release was presented on a take it or leave it basis. The Release provided that if and
only if Complainant relinquishes RESPONDENT VONS from any legal action, through
8 executing the Release, Complainant could continue her employment; apparently, without
her signing the Release, Complainant would remain indefinitely suspended, thus essentially
9 terminated.
Complainant refused to sign the Release and was informed that she was not allowed to
10 return to work unless she did so. Despite being suspended without pay since February 25,
2022, Complainant did not receive a final paycheck until May of 2022.
11 On information and belief, RESPONDENT VONS regularly and as a matter of standard
practice and policy suspends, discharges, or expels, or otherwise discriminates against its
12 employees that complain of payment of wages; similarly, RESPONDENT VONS regularly
and unlawfully removes employees that complain of discriminatory practices; and more
13 generally, RESPONDENT VONS regularly and unlawfully removes employees that complain
of any perceived unlawful treatment employees are subjected to during their course of
14 employment with RESPONDENT VONS. Instead of addressing its employees' concerns or
genuinely investigating their claims, RESPONDENT VONS invokes the unlawful, company-
15 wide practice of suspending employees (without pay) upon receipt of their complaints
alleging unlawful treatment or practices by RESPONDENT VONS, and systematically
16 conditions their continued employment (i.e., lifting of their unpaid suspension) on their
execution of an agreement to a demotion and or a waiver and release of any and all claims
17 the aggrieved employee was complaining about to RESPONDENT VONS in the first place.
18 Therefore, RESPONDENT VONS ratifies the actions of its employees in furtherance of its
unlawful oppressive policy, and as such Complainant is entitled to punitive damages.
19 Accordingly, Respondents have violated California Laws, the FEHA, and the California
Labor Code for Respondents' multiple illegal employment practices, which deprived
20 Complainant and other similarly aggrieved employees of their rights and employment
benefits.

1 VERIFICATION

2 I, **Saul Acherman**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 7, 2022, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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Irvine, California