

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
DONNITTA CARTER

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Superior Court of California
County of Fresno
By: Rebecca Ayala , Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO**

DONNITTA CARTER, an individual,

Plaintiff,

vs.

CIRCLE K STORES INC., a Texas
corporation; HILDA DOE, an individual;
CHERISE EASTMAN, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR:

- 1. DISCRIMINATION BASED UPON
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940 (a);**
- 2. HOSTILE WORK
ENVIRONMENT IN VIOLATION
OF GOVT. CODE §12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION
OF GOVT. CODE §12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION FROM
OCCURRING IN VIOLATION OF
GOVT. CODE §12940(k);**
- 5. HARASSMENT BASED ON
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940 (a);**
- 6. FAILURE TO ACCOMMODATE
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940(m);**
- 7. FAILURE TO ENGAGE IN A
GOOD FAITH INTERACTIVE
PROCESS IN VIOLATION OF
GOVT. CODE §12940(n);**
- 8. WRONGFUL TERMINATION IN
VIOLATION OF FEHA IN
VIOLATION OF GOVT. CODE
§12940 *et seq.*;**

9. FAILURE TO PAY MINIMUM WAGES DUE (Cal. *Labor Code* §§ 1194, 1194.2, 1197, 1197.1 1198; IWC Wage Order No. 7);
10. FAILURE TO PROVIDE MEAL PERIODS (Cal. *Labor Code* §226.7; IWC Wage Order No. 7);
11. FAILURE TO PAY FOR REST PERIODS NOT PROVIDED (Cal. *Labor Code* § 226.7; IWC Wage Order No. 7);
12. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 7);
13. FAILURE TO PAY ALL WAGES DUE ON TERMINATION (Cal. *Labor Code* §203; IWC Wage Order No. 7);
14. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* §2802; IWC Wage Order No. 7);
15. FAILURE TO PROVIDE UNIFORM MAINTENANCE ALLOWWANCE (Cal. *Labor Code* § 2802);
16. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5); and
17. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 et seq.).

DEMAND FOR A JURY TRIAL

Donnitta Carter (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Complaint under California Government Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes, *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

1 2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
2 395.5, because the claims made, and the *Government Code* violations as against the persons
3 identified herein, occurred in Fresno County and because Defendant Circle K Stores Inc.,
4 owned and operated their business in Fresno County.

5 **II. PARTIES**

6 3. At all times relevant hereto, Plaintiff (hereinafter “Plaintiff”) was an individual
7 over age 18 and a resident of Fresno, California.

8 4. Plaintiff is informed and believes and thereon alleges that at all times material
9 hereto, Defendant Circle K Stores Inc. (“CIRCLE K”), has been, and is a Texas corporation,
10 with a principal place of business at 1130 W. Warner Road, Building B, Tempe, Arizona
11 85284. At all times material hereto, CIRCLE K has been, and is, a convenience store.

12 5. Plaintiff is informed and believes and thereon alleges that Defendant Hilda Doe
13 (“Hilda”) is an individual, who at all times relevant herein, was a resident of Fresno County.
14 Hilda is the store manager at CIRCLE K.

15 6. Plaintiff is informed and believes and thereon alleges that Defendant Cherise
16 Eastman (“Cherise”) is an individual, who at all times relevant herein, was a resident of Fresno
17 County. Cherise is the Market Manager of CIRCLE K.

18 7. Plaintiff was employed by CIRCLE K, as a Graveyard Customer Service
19 Representative. Plaintiff is informed and believes and thereon alleges that at all times material
20 hereto CIRCLE K has been authorized to do business and has been doing business in the State
21 of California.

22 8. Plaintiff is informed and believes and thereon alleges, that at all times relevant
23 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
24 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
25 herein alleged, were acting within the course and scope of such agency or employment, and
26 with the approval and ratification of each of the other Defendants.
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1 9. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
2 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
3 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
4 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
5 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
6 individual person who owned, controlled, or managed the business for which Plaintiff worked
7 and/or who directly or indirectly exercised operational control over the wages, hours, and
8 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director
9 and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
10 Defendants, which included decision-making responsibility for, and establishment of, disability
11 discrimination and harassment practices and policies, and wage and hour violations, for
12 Defendants which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the
13 remaining Defendants, are “employers” as a matter of law and are liable on the causes of action
14 alleged herein.

15 10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 100 are, and at all times relevant hereto were, persons, corporations or other business
17 entities organized and existing under and by virtue of the laws of the State of California, and
18 are/were qualified to transact and conduct business in the State of California, and did transact
19 and conduct business in the State of California, and are thus subject to the jurisdiction of the
20 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
21 employ persons, conduct business and engage in disability discrimination and wage and hour
22 violations, in the County of Fresno.

23 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
24 fictitiously named Defendants aided and assisted the named Defendants in committing the
25 wrongful acts alleged herein, and that Plaintiff’s damages were proximately caused by each
26 Defendant.

27 **III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
28 **ACTION**

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22. CIRCLE K's wrongful termination of Plaintiff was wrongfully motivated by discrimination against her due to her disability.

23. At all times material hereto, CIRCLE K regularly employed five or more persons and therefore are employers, as that term is defined in *Government Code* § 12926(d).

24. On August 9, 2024, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing ("DFEH") alleging discrimination and harassment by CIRCLE K, Hilda and Cherise. and On August 9, 2024, the DFEH issued to Plaintiff a Right to Sue Notice as to CIRCLE K, Hilda and Cherise.

Wage and Hour Violations

25. The employment by CIRCLE K of Plaintiff is governed by Industrial Welfare Commission Wage Order 7, which covers those persons employed in the mercantile industry.

26. Under California law, non-exempt employees as defined by IWC Wage Order No. 7, are entitled to minimum wages.

27. As a result of CIRCLE K's failure to pay Plaintiff at required minimum wage rates and failure to afford meal/rest breaks, the wage statements issued to her did not comply with *Labor Code* §226 and California IWC Wage Order No. 7 in that they did not accurately reflect all wages earned and due and owing.

28. Plaintiff was routinely not afforded meal breaks.

29. Plaintiff was routinely not afforded rest breaks.

30. CIRCLE K routinely failed to provide Plaintiff with itemized wage statements that properly and accurately itemized the number of hours she worked at the effective regular rates of pay.

31. CIRCLE K failed to pay Plaintiff all wages due on termination.

32. CIRCLE K failed to reimburse Plaintiff's necessary business expenses.

33. CIRCLE K failed to provide Plaintiff with a uniform maintenance allowance.

34. CIRCLE K failed to provide Plaintiff with her requested employment records.

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1 35. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
2 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
3 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
4 amend this Complaint once she completes and complies with the provisions under the law.
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6 **FIRST CAUSE OF ACTION**

7 **(Discrimination Based on Physical Disability in Violation of Government Code**
8 **§§12940(a) - By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)**

9 36. Plaintiff realleges and incorporates by reference all of the allegations set forth in
10 this Complaint.

11 37. Under the California Fair Employment and Housing Act ("FEHA"),
12 Government Code § 12940(a), an employer cannot discriminate against an employee, because
13 of a physical disability.

14 38. Plaintiff suffered from the physical limitation as set forth above and was
15 therefore a member of the class of persons protected from disability discrimination under
16 California Government Code § 12940(a).

17 39. Upon learning about Plaintiff's disability, and not wanting a disabled employee,
18 on or about November 30, 2023, CIRCLE K terminated Plaintiff's employment in violation of
19 California Government Code § 12940.

20 40. By terminating Plaintiff because of her physical disability, CIRCLE K violated
21 Government Code § 12940(a).

22 41. As a direct and proximate result of CIRCLE K conduct, individually and
23 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
24 earnings, and benefits and has been damaged in her capacity to earn her salary, and has lost
25 and will continue to lose employment benefits in the amount of at least \$89,280.00, according
26 to proof.

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1 42. As a direct and proximate result of CIRCLE K's actions, Plaintiff has suffered
2 severe and serious injury to her person, all to her damage in the amount of at least \$1,000,000,
3 according to proof.

4 43. CIRCLE K's conduct in discriminating against Plaintiff because of her physical
5 disability subjected her to cruel and unjust hardship in conscious disregard of her rights, as it
6 was anticipated by CIRCLE K that Plaintiff would be unable to find comparable employment
7 in the foreseeable future. Plaintiff is informed and believes, and thereon alleges, that her
8 wrongful termination by CIRCLE K was done with the intent to cause her injury. As a
9 consequence of the aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled
10 to an award of punitive damages in a sum to be shown according to proof.

11 44. Pursuant to California Government Code §12965(b), Plaintiff requests an award
12 of attorneys' fees in this action.

13 **SECOND CAUSE OF ACTION**

14 **(Hostile Work Environment in Violation Govt. Code §12940 et seq.- By Plaintiff Against**
15 **Defendant CIRCLE K and Does 1 through 100)**

16 45. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 46. The offensive conduct to which Plaintiff was subjected constitutes a hostile
19 work environment in violation to FEHA, California Government Code §12940 et seq. During
20 his employment, CIRCLE K violated FEHA, California Government Code §12940 (j), by
21 discriminating against Plaintiff due to her physical disability.

22 47. CIRCLE K's harassment was hostile, abusive, continuous and pervasive to
23 create a hostile work environment for Plaintiff.

24 48. CIRCLE K's harassment was unwelcome, humiliating, offensive and adversely
25 affected the terms of Plaintiff's employment.

26 49. Plaintiff was subjectively offended by CIRCLE K's conduct and any reasonable
27 person in Plaintiff's position would perceive CIRCLE K's conduct as being offensive, hostile
28 and abusive.

50. As a direct result of CIRCLE K's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and earning capacity, in at least the amount of \$1,000,000, subject to proof at trial.

51. Plaintiff is hereby entitled to general and compensatory damages in at least the amount of \$89,280.00, subject to proof at trial.

52. CIRCLE K did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

53. All actions of CIRCLE K were known, ratified and approved by the officers or managing agents of CIRCLE K. Therefore, Plaintiff is entitled to punitive or exemplary damages against CIRCLE K in an amount to be determined at the time of trial.

54. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

THIRD CAUSE OF ACTION

(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)

55. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

56. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h), which provides that it is unlawful to retaliate against a person "because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

57. As a result of her physical disability, Plaintiff was denied the right to work in an environment free of discrimination and harassment and was wrongfully terminated by CIRCLE K.

1 58. CIRCLE K's retaliatory conduct toward Plaintiff caused her emotional injury,
2 including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. CIRCLE K
3 retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

4 59. Plaintiff's physical disability was the reason CIRCLE K retaliated against her.

5 60. Plaintiff has suffered monetary damages, lost wages and privileges of
6 employment illegally caused by CIRCLE K's discriminatory conduct in the amount of at least
7 \$89,280.00, according to proof.

8 61. CIRCLE K did the things hereinabove alleged, intentionally, oppressively, and
9 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
10 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
11 community.

12 62. All actions of CIRCLE K were known, ratified and approved by the officers or
13 managing agents of CIRCLE K. Therefore, Plaintiff is entitled to punitive or exemplary
14 damages against the CIRCLE K in an amount to be determined at the time of trial.

15 63. Pursuant to California Government Code §12965(b), Plaintiff requests an award
16 of attorneys' fees in this action.

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18 **FOURTH CAUSE OF ACTION**

19 **(Failure to Prevent Discrimination from Occurring in Violation of Government Code**
20 **§12940(k) - By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)**

21 64. Plaintiff realleges and incorporates by reference all of the allegations set forth
22 above in the Complaint.

23 65. CIRCLE K's conduct in subjecting Plaintiff to discriminatory conduct due to
24 Plaintiff's physical disability constituted breach of their duty under FEHA, including the duty to
25 take immediate and appropriate corrective action and to take all reasonable steps to prevent
26 discrimination and retaliation from occurring pursuant to California Government Code Section
27 12940(k).

28 66. CIRCLE K failed to take measures to prevent discrimination and retaliation.

1 67. As a direct result of CIRCLE K's failure to take all reasonable steps necessary to
2 prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering,
3 extreme and severe mental anguish and emotional distress, loss of earnings and earning
4 capacity, in the amount of at least \$1,000,000, according to proof at trial.

5 68. Plaintiff is hereby entitled to general and compensatory damages in the amount
6 of at least \$89,280.00, according to proof at trial.

7 69. CIRCLE K did the things hereinabove alleged, intentionally, oppressively, and
8 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
9 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
10 community.

11 70. All actions of CIRCLE K were known, ratified and approved by the officers or
12 managing agents of CIRCLE K. Therefore, Plaintiff is entitled to punitive or exemplary
13 damages against the CIRCLE K in an amount to be determined at the time of trial.

14 71. Pursuant to California Government Code §12965(b), Plaintiff requests an award
15 of attorneys' fees in this action.

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17 **FIFTH CAUSE OF ACTION**

18 **(Harassment Due to Physical Disability in Violation of Govt. Code §12940(a)– By Plaintiff**
19 **against all Defendants and Does 1 through 100)**

20 72. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 73. Beginning in or about March 2023, Plaintiff was harassed by the actions,
23 conduct and comments of CIRCLE K's employees, Hilda and Cherise, which actions, conduct
24 and comments combined to create and allow a pattern of harassment towards her due to her
25 disability.

26 74. Defendants' actions constituted a continuing violation of Cal. Gov. Code §
27 12940, et seq.

1 75. Defendants negligently and in bad faith failed to properly investigate Plaintiff's
2 claims of disability and harassment and take appropriate remedial action.

3 76. Defendants engaged in retaliatory actions against Plaintiff due to her disability
4 and Plaintiff was subjected to unfair and hostile treatment by Defendants.

5 77. All of the conduct by Defendants, was done with the full knowledge and
6 ratification of the management employees of CIRCLE K and was consistent with the
7 recognized policies and procedures of CIRCLE K, which tolerated and encouraged such
8 discriminatory conduct.

9 78. At all times herein mentioned, Defendants were legally required to refrain from
10 discriminating against and harassing any employee on the basis of physical disability, among
11 other things. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in
12 full compliance with these sections, and received a right to sue letter.

13 79. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged
14 in this Complaint. As a direct and proximate result of the conduct of Defendants, Plaintiff has
15 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain
16 and anguish, all to his damage in at least \$1,000,000, subject to proof at trial.

17 80. Defendants did the things hereinabove alleged, intentionally, oppressively, and
18 maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted
19 in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and
20 ought not to be suffered by any member of the community.

21 81. All actions of Defendants were known, ratified and approved by the officers or
22 managing agents of CIRCLE K. Therefore, Plaintiff is entitled to punitive or exemplary
23 damages against the Defendants, and each of them, in an amount to be determined at the time
24 of trial.

25 82. Pursuant to California Government Code §12965(b), Plaintiff requests an award
26 of attorneys' fees in this action.
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1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Accommodate Physical Disability in Violation of Public Policy, Govt.**
3 **Code §§12940 (m) – By Plaintiff Against Defendant CIRCLE K Does 1 through 100)**

4 83. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 84. As alleged herein, in March 2023 and thereafter, Plaintiff requested that
7 CIRCLE K, make a reasonable accommodation for her physical disability so that she would be
8 able to perform the essential job requirements. CIRCLE K refused said accommodation and
9 refused to discuss any other potential reasonable accommodation it might afford to Plaintiff,
10 wrongfully terminating Plaintiff instead on or about November 30, 2023.

11 85. By refusing to afford Plaintiff a reasonable accommodation, CIRCLE K violated
12 Government Code § 12940(m).

13 86. As a direct and proximate result of CIRCLE K's conduct, individually and
14 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
15 earnings, and benefits and has been damaged in her capacity to earn her salary, and has lost and
16 will continue to lose employment benefits in an amount according to proof.

17 87. As a direct and proximate result of CIRCLE K's actions, Plaintiff has suffered
18 severe and serious injury to her person, all to her damage in the amount of at least \$1,000,000,
19 according to proof.

20 88. CIRCLE K did the things hereinabove alleged, intentionally, oppressively, and
21 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
22 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
23 community.

24 89. All actions of CIRCLE K were known, ratified and approved by the officers or
25 managing agents of CIRCLE K's. Therefore, Plaintiff is entitled to punitive or exemplary
26 damages against CIRCLE K in an amount to be determined at the time of trial.

27 90. Pursuant to California Government Code §12965(b), Plaintiff requests an award
28 of attorneys' fees in this action.

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91. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

93. At all relevant times, Plaintiff was a member of a protected class within the meaning of Government Code §12940(a) et seq. because she had a disability, due to injuries suffered, of which CIRCLE K had both actual and constructive notice.

95. CIRCLE K breached their statutory duty under FEHA to engage in a timely good faith interactive process to determine a reasonable accommodation for Plaintiff's physical disability. Plaintiff further alleges: (1) that CIRCLE K was the Plaintiff's employer; (2) that Plaintiff was an employee of CIRCLE K; (3) that Plaintiff sustained injuries that required reasonable accommodation and which injuries were known to CIRCLE K; (4) that Plaintiff requested that CIRCLE K make reasonable accommodation for her injuries and/or physical condition so that she would be able to perform the essential functions of her job requirements; (5) that Plaintiff was willing to participate in the interactive process to determine whether reasonable accommodation could be made so that she would be able to perform the essential job requirements; (6) that CIRCLE K failed to participate in a timely good faith interactive process with Plaintiff to determine whether reasonable accommodation could be made; (7) that Plaintiff was harmed financially; and (8) that CIRCLE K's failure to engage in a good faith

1 interactive process was a substantial factor in causing Plaintiff's damage and harm. Instead of
2 engaging in a good faith interactive process, CIRCLE K, wrongfully terminated Plaintiff on or
3 about November 30, 2023.

4 96. The above acts of CIRCLE K constitute violations of FEHA, and were a
5 proximate cause in Plaintiff's damages as stated below.

6 97. CIRCLE K did the things hereinabove alleged, intentionally, oppressively, and
7 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
8 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
9 community.

10 98. All actions of CIRCLE K were known, ratified and approved by the officers or
11 managing agents of CIRCLE K. Therefore, Plaintiff is entitled to punitive or exemplary
12 damages against CIRCLE K in an amount to be determined at the time of trial.

13 99. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award
14 of attorneys' fees and costs.

15 **EIGHTH CAUSE OF ACTION**

16 **(Wrongful Termination in Violation of FEHA, Govt. Code §§12940 et seq.**

17 **– By Plaintiff Against Defendant CIRCLE K Does 1 through 100)**

18 100. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 101. Plaintiff alleges that significant policies exist in the State of California that
21 prohibit discrimination, retaliation, wrongfully terminating an employee for being disabled,
22 complaining about harassment and protesting against unlawful employment practices. Among
23 others, the right to be free from discrimination and retaliation are codified in the California and
24 United States Constitutions and the provisions of Government Code §§12900 *et seq.*

25 102. These policies are set forth in various laws including but not limited to
26 Government Code §§12940 (a), 12940 (k); Cal. Const. Art. 1, §8 (employment
27 discrimination).

28 103. Plaintiff became disabled while working for CIRCLE K.

1 104. CIRCLE K, acting through their employees, intentionally created and knowingly
2 permitted the discrimination based on disability and harassment.

3 105. CIRCLE K wrongfully terminated Plaintiff in violation of important and well-
4 established public policies, including, but not limited to, policies against employment
5 discrimination based upon disability and against harassment.

6 106. CIRCLE K's wrongful conduct proximately caused Plaintiff to suffer general,
7 special and statutory damages in the amount of at least \$89,280.00, according to proof.

8 107. As a further proximate result of the unlawful acts of CIRCLE K as alleged
9 above, Plaintiff has been harmed in that she has suffered humiliation, mental anguish, and
10 emotional and physical distress that a reasonable person would suffer upon losing her job. As
11 a result of such actions and consequent harm, Plaintiff has suffered such damages in the
12 amount of at least \$1,000,000, according to proof.

13 108. The above acts of CIRCLE K constituted a wrongful termination of Plaintiff and
14 were in violation of public policy and FEHA as described above. Such termination was a
15 substantial factor in causing damage and injury to Plaintiff as set forth below.

16 109. Plaintiff believes and thereon alleges that engaging in protected activity,
17 including, but not limited to, complaining about harassment were factors in CIRCLE K's
18 conduct as alleged hereinabove.

19 110. As a result of CIRCLE K's conduct, Plaintiff is entitled to recover punitive
20 damages in amount according to proof at trial.

21 111. Pursuant to California Government Code §12965(b), Plaintiff requests an award
22 of attorneys' fees in this action.

23 **NINTH CAUSE OF ACTION**

24 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
25 **119, IWC Wage Order No. 7 – By all Plaintiff Against Defendant CIRCLE K Does 1**
26 **through 100)**

27 112. Plaintiff realleges and incorporates by reference all of the allegations set forth in
28 this Complaint.

1 113. *Labor Code* § 1197 states the California requirement that employees must be
2 paid at least the minimum wage fixed by the Commission, and any payment of less than the
3 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
4 less than the legal minimum wage... to recover in a civil action the unpaid balance of the full
5 amount of this minimum wage.” IWC Wage Order No. 7 also obligates employers to pay each
6 employee minimum wages for all hours worked. These minimum wage standards apply to each
7 hour employees worked for which they were not paid. Therefore, an employer’s failure to pay
8 for any particular hour of time worked by an employee is unlawful, even if averaging an
9 employee’s total pay over all hours worked, paid or not, results in an average hourly wage
10 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

11 114. Here, Plaintiff was not paid minimum wages due to CIRCLE K’s failure to
12 afford compliant Plaintiff meal/rest breaks.

13 115. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
14 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
15 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

16 116. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
17 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
18 *Code* § 1194. Where an employee, such as Plaintiffs are not paid for all hours worked under
19 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
20 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
21 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
22 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
23 minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
24 (N.D. Cal. 2016).

25 117. Plaintiff suffered and continued to suffer losses related to the use and
26 enjoyment of compensation due and owing to her as a direct result of CIRCLE K’s unlawful
27 acts and Labor Code violations in the amount of at least \$89,280, according to proof at trial.
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118. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum wages against employers and those individuals acting on their behalf. Plaintiffs request that this Court assess said penalty against Defendants CIRCLE K in an amount to be proven at trial.

119. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant CIRCLE K owes her, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

TENTH CAUSE OF ACTION

**(Failure to Provide Meal Breaks in Violation of Labor Code §226.7; IWC Qage
Order No. 7– By Plaintiff Against Defendant CIRCLE K Does 1 through 100)**

120. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

121. California Labor Code §226.7(a) prohibits an employer from requiring an employee to work during any meal period mandated by IWC Wage Order No. 7. Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an employee to work during a meal or rest break or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..."

122. California Labor Code §1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

123. Wage Order No. 7 provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30-minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

124. Wage Order No. 7 further provides, in relevant part: "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

125. Section 512(a) of the California Labor Code provides, in relevant part, that:

1 An employer may not employ an employee for a work period of more than five
2 hours per day without providing the employee with a meal period of not less
3 than 30-minutes, except that if the total work period per day of the employee is
4 no more than six hours, the meal period may be waived by mutual consent of
5 both the employer and employee.

6 126. The Labor Code and Wage Order provisions cited above require California
7 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
8 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
9 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
10 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
11 the fifth hour of their shifts.

12 127. Plaintiff was routinely not afforded meal breaks because she did not have
13 coverage for the store. She was only able to take meal breaks on weekends. Also, when
14 Plaintiff did have a meal break, it was interrupted. Plaintiff was also restricted from leaving the
15 store during her breaks.

16 128. CIRCLE K further violated IWC Wage Order No. 7 and Labor Code
17 § 226.7 by failing to pay one hour of compensation to Plaintiff at her individual and regular rate
18 of pay for each work day that the meal period was not provided, in an amount according to
19 proof. This amount remains owed and unpaid.

20 129. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
21 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
22 § 226.7(b).

23 130. As a direct and proximate result of CIRCLE K unlawful conduct as alleged
24 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
25 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
26 statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's
27 violations of the California Labor Code and Wage Order No. 7.

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ELEVENTH CAUSE OF ACTION

(Failure to Provide Rest Breaks in Violation of Labor Code §226.7; IWC Wage Order No. 7– By Plaintiff Against Defendant CIRCLE K Does 1 through 100)

131. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

132. Labor Code § 226.7 and Wage Order No. 7 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

133. Labor Code § 226.7 and Wage Order No. 7 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

134. CIRCLE K has intentionally and improperly failed to afford Plaintiff rest periods in violation of Labor Code § 226.7 and Wage Order No. 7. Plaintiff was also restricted from leaving the store during her breaks.

135. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

136. At all times relevant hereto, CIRCLE K failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No. 7.

137. By virtue of CIRCLE K’s unlawful failure to afford rest periods, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

TWELFTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code §226; IWC Wage Order No. 7– By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)

138. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

1 139. At all times relevant herein, CIRCLE K issued payroll statements to Plaintiff
2 which violated Cal. Lab. Code §226(a), in that CIRCLE K failed to properly and accurately
3 itemize the number of hours she worked at the effective regular rates of pay.

4 140. CIRCLE K knowingly and intentionally failed to comply with Cal. Lab. Code
5 §226(a), causing damage to Plaintiff. These damages, including but not limited to costs
6 expended calculating her true hours worked, and the amount of employment taxes which were
7 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
8 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
9 violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Cal.
10 Lab. Code § 226(e), in an amount to be proven at trial, plus reasonable attorneys' fees and
11 costs.

12 141. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
13 attorneys' fees and costs in obtaining the injunction, pursuant to Cal. Lab. Code § 226(g).

14 **THIRTEENTH CAUSE OF ACTION**

15 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code §203;**
16 **IWC Wage Order No. 7– By Plaintiff Against Defendant CIRCLE K Does 1 through 100)**

17 142. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.

19 143. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
20 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
21 from employment, unpaid wages are due and payable within 72 hours of resignation.

22 144. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
23 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
24 paid, not to exceed thirty days.

25 145. Plaintiff was wrongfully discharged from CIRCLE K employ and CIRCLE K
26 willfully failed to pay Plaintiff wages due to her.

27 146. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
28 she was not timely paid, not to exceed 30 days' wages.

1 147. By willfully failing to pay Plaintiff for minimum wages and separate amounts
2 owed for meal/rest periods not provided, as set forth above, in a timely manner as required by
3 Cal. Lab. Code §§ 201 & 202, CIRCLE K is liable to her for penalties pursuant to Cal. Lab.
4 Code § 203, in an amount equal to 30 days of her per diem wage rate in an amount according to
5 proof.

6 **FOURTEENTH CAUSE OF ACTION**

7 **REIMBURSEMENT OF BUSINESS EXPENSES**

8 **(Cal. Labor Code §2802; IWC Wage Order No. 7 By all Plaintiff Against Defendant**
9 **CIRCLE K and Does 1 through 100)**

10 148. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 149. Labor Code §2802 requires employers to indemnify employees for all necessary
13 expenditures incurred by employees in the discharge of their duties.

14 150. At all times relevant herein, Defendant was aware that Plaintiff was using her
15 personal cell phone and vehicle for business, but failed to indemnify Plaintiff for all her
16 business-related expenses, including wear and tear, in accordance with Labor Code §2802.

17 151. As a result of CIRCLE K's conduct, Plaintiff suffered damages in an amount,
18 subject to proof, to the extent she was not reimbursed for all of her business-related expenses
19 incurred in the discharge of her duties.

20 152. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
21 her unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

22 **FIFTEENTH CAUSE OF ACTION**

23 **(Failure to Provide Uniform Maintenance Allowance in violation of Cal. Labor Code §**
24 **2802 By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)**

25 153. Plaintiff realleges and incorporates by reference all of the allegations set forth in
26 this Complaint.

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1 154. Under California law, if an employer requires non-exempt employees to wear a
2 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
3 §2802.

4 155. An employer may never impose a financial burden on employees, with respect
5 to purchasing or maintaining clothing, which would reduce the employees' wage rate below the
6 minimum wage.

7 156. Here, CIRCLE K did not reimburse Plaintiff for shoes she purchased for
8 business-related purposes.

9 157. As a proximate result of the aforementioned violations of § 2802, Plaintiff is
10 entitled to recovery from CIRCLE K for reimbursement of necessary expenditures including
11 interest and attorneys' fees.

12 158. As a proximate result of the aforementioned violations of Labor Code § 2802,
13 Plaintiff has been damaged in an amount according to proof at the time of trial.

14 **SIXTEENTH CAUSE OF ACTION**

15 **(Failure to Allow Inspection of Employment Records in violation of Cal. *Labor Code***
16 **§1198.5 By Plaintiff Against Defendant CIRCLE K and Does 1 through 100)**

17 159. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.

19 160. California Labor Code Section 1198.5 provides:

20 (a) Every current and former employee, or his or her representative, has the right
21 to inspect and receive a copy of the personnel records that the employer
22 maintains relating to the employee's performance or to any grievance concerning
23 the employee.

24 (b) The employer shall make the contents of those personnel records available
25 for inspection to the current or former employee, or his or her representative, at
26 reasonable intervals and at reasonable times, but not later than 30 calendar days
27 from the date the employer receives a written request, unless the current or
28 former employee, or his or her representative, and the employer agree in writing

1 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
2 date does not exceed 35 calendar days from the employer's receipt of the written
3 request to inspect the records. Upon a written request from a current or former
4 employee, or his or her representative, the employer shall also provide a copy of
5 the personnel records,... later than 30 calendar days from the date the employer
6 receives the request...

7 (k) If an employer fails to permit a current or former employee, or his or her
8 representative, to inspect or copy personnel records within the times specified I
9 this section... the current or former employee may recover a penalty of seven
10 hundred fifty dollars (\$750) from the employer.

11 (1) A current or former employee may also bring an action for injunctive relief
12 to obtain compliance with this section, and may recover costs and reasonable
13 attorney's fees in such an action.

14 161. Additionally, pursuant to Wage Order No. 7, at section 7 re: Records, employers
15 are required to keep accurate payroll records on each employee, and such records must be made
16 readily available for inspection by the employee upon reasonable request. The employer must
17 also maintain accurate production records.

18 162. On or about July 12, 2024, Plaintiff 's counsel issued a written request to
19 CIRCLE K for copies of her personnel records.

20 163. Under California Labor Code Sections 226, 432 and 1198.5, such records were
21 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
22 Plaintiff's counsel and CIRCLE K did not enter into an agreement to enlarge the time for
23 CIRCLE K's compliance, and CIRCLE K has failed and refused to permit Plaintiff copies of
24 her records.

25 164. As a direct result and consequence of CIRCLE K's failure and refusal to permit
26 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
27 decree mandating CIRCLE K's compliance. Plaintiff has suffered and will suffer harm as a
28

1 result of CIRCLE K's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
2 penalty of \$750 based upon CIRCLE K's violation of §1198.5.

3 **SEVENTEENTH CAUSE OF ACTION**

4 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. &**
5 **Prof. Code §17200 et seq.– By Plaintiff Against Defendant CIRCLE K Does 1 through**
6 **100)**

7 165. Plaintiff realleges and incorporates by reference all of the allegations set forth in
8 this Complaint.

9 166. California Business & Professions Code § 17200 et seq. prohibits acts of unfair
10 competition, which shall mean and include any "unlawful and unfair business practices."

11 167. CIRCLE K's conduct as alleged herein has been and continues to be unfair,
12 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
13 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
14 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
15 therefore has standing to bring this suit for restitution.

16 168. The payment of minimum wages, affording of meal/rest breaks, reimbursing
17 business expenses, providing a uniform maintenance allowance and providing employment
18 records are fundamental public policies of the State of California. It is also the public policy of
19 this State to enforce minimum labor standards, to ensure that employees are not required or
20 permitted to work under substandard and unlawful conditions, and to protect those employers
21 who comply with the law from losing competitive advantage to other employers who fail to
22 comply with labor standards and requirements.

23 169. CIRCLE K failed to pay Plaintiff for minimum wages, allow Plaintiff to take
24 meal/rest breaks, to pay all wages due on termination, to issue accurate wage statements,
25 reimburse business expenses, to pay a uniform maintenance allowance and to provide her
26 employment records.

27 170. During the applicable limitations period, CIRCLE K violated Plaintiff's rights
28 under the above-referenced Labor Code sections by failing to pay minimum wages and

1 meal/rest breaks not afforded in violation of *Labor Code* §§ 226.7 and 203, 226, as a result of
2 not correctly calculating her regular rate of pay to include all applicable remuneration,
3 including, but not limited to, minimum wages and meal/rest break premium pay.

4 171. Through the conduct alleged herein, CIRCLE K acted contrary to these public
5 policies and has thus engaged in unlawful and/or unfair business practices in violation of
6 Business & Professions Code §§ 17200 et. seq., depriving Plaintiff of the rights, benefits, and
7 privileges guaranteed to employees under California law.

8 172. CIRCLE K regularly and routinely violated the following statutes and
9 regulations with respect to Plaintiff:

10 Cal. *Labor Code* § 1197 and Wage Order No. 7 (failure to pay minimum
11 wages);

12 Cal. *Lab. Code* § 226 (failure to provide accurate wage statements to employees
13 at the time of payment);

14 Cal. *Lab. Code* §§ 201, 202 and 203 (failure to pay wages due on termination);

15 Cal. *Lab. Code* §§ 226.7 and 512, and IWC Wage Order No. 7 (failure to
16 provide meal/rest periods);

17 Cal. *Lab. Code* §2802 (failure to reimburse business expenses);

18 Cal. *Labor Code* § 2802 (failure to provide uniform maintenance allowance);
19 and

20 Cal. *Lab. Code* §1198.5 (failure to allow inspection of employment records).

21 173. By engaging in these business practices, which are unfair business practices
22 within the meaning of Bus. & Prof. Code §§ 17200 et seq., CIRCLE K harmed Plaintiff and
23 gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is
24 entitled to obtain restitution of these funds.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
27 and against Defendants, and each of them, as follows:
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- 1 1. For compensatory damages in the amount of minimum wages due to Plaintiff, in
2 the amount of at least \$89,280.00, according to proof;
- 3 2. For compensatory damages for lost wages and employment benefits, in the
4 amount of at least \$89,280.00, according to proof;
- 5 3. For compensatory damages for physical and emotional distress, in the amount of
6 \$1,000,000, according to proof;
- 7 4. For an award of consequential damages, according to proof;
- 8 5. For general damages according to proof;
- 9 6. For compensation of one hour at the regular rate of pay for each meal/rest period
10 denied in violation of *Cal. Lab. Code* § 226.7 and Wage Order No. 7, according to proof;
- 11 7. For statutory damages pursuant to *Cal. Lab. Code* § 226, according to proof;
- 12 8. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
13 § 203, in an amount equal to her daily pay rate at the time of termination, multiplied by the
14 total amount of days elapsed between the date of involuntary termination, and/or 72 hours after
15 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
- 16 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
17 pursuant to *Business & Professions Code* § 17200 and *Labor Code* § 203, according to proof;
- 18 10. For compensatory damages in the amount of Plaintiff's out of pocket expenses
19 for cell phone and personal vehicle use and/or reimbursement of monies incurred while
20 performing Defendant's business-related duties plus interest, costs and attorneys' fees pursuant
21 to *Cal. Code Civ. Proc.* §2802(c);
- 22 11. For compensatory damages in the amount of Plaintiff's uniform maintenance
23 expenses, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
- 24 12. For a preliminary and permanent injunction ordering CIRCLE K to disclose
25 Plaintiff's payroll records and to prevent CIRCLE K from committing such illegal acts in the
26 future;
- 27 13. For an award of restitution of wages to Plaintiff in an amount equal to the
28 amount of wages owed and unpaid, according to proof;

14. For injunctive relief requiring CIRCLE K to comply with Labor Code 1198.5(b)(1);

15. For punitive and exemplary damages in a sum to be determined at trial;

16. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to *Government Code* § 12965(b), Cal. Lab. Code §§ 218.5, 1198.5(1), 2802 and Cal. Code Civ. Proc. §1021.5;

17. For prejudgment interest, according to proof; and

18. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Donnitta Carter hereby respectfully requests a trial by jury for all claims and issues raised in her Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: August 9, 2024

By:

Kevin A. Lipeles
Attorneys for Plaintiff
Donnitta Carter