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October 8, 2024

VIA E-FILING

California Labor & Workforce Development Agency
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: *Donnitta Carter v. Circle K Stores Inc.* – Case No. LWDA-CM-1044711-24

To Whom It May Concern:

We are in receipt of Donnitta Carter's August 9, 2024 letter regarding alleged wage and hour violations she experienced during her employment with Circle K Stores Inc. ("Circle K"). We represent Circle K and ask that all future correspondence regarding this matter be directed to us.

Circle K denies all of the allegations in Ms. Carter's notice letter and hereby provides notice of Circle K's cure of the labor code violations that Ms. Carter alleges as follows:

- **Cure of Alleged Violations of Labor Code Sections 510, 226.7, 512(a), 1182.12, 1194, 1194.2 1197, 1197.1, 1998 – Failure to Provide Overtime, Meal and Rest Periods, and Minimum Wage.** Ms. Carter is a former Circle K Customer Service Representative ("CSR"), whose employment began on August 1, 2020 and ended on November 30, 2023. She alleges that Circle K failed to pay her minimum wage in violation of California Labor Code sections 1194, 1194.2, 1997, 1197.1, and 1198, and failed to provide meal and rest breaks in violation of California Labor Code section 226.7.

As a preliminary matter, Ms. Carter's hourly rate was \$15.50, California's minimum wage in 2023. Since she was hired in 2020, Ms. Carter has been paid commensurate with California's minimum wage. At all relevant times, Circle K compensated Ms. Carter and other employees for all hours worked at the correct rate of pay, including minimum, regular, overtime, double time wages, and compliant meal and rest periods, or premium compensation in lieu thereof, as required by applicable law. In fact, Circle K's policy requires store employees to clock in and out for their rest breaks in addition to their meal breaks. Ms. Carter's time records show she regularly clocked in and out for two 10-15 minute rest breaks per eight hour shift, which were paid. Some of her rest breaks were as long as 21 minutes long.

- **Cure of Alleged Violations of Labor Code Sections 226(a) and 1198 – Failure to Maintain Accurate Employment Records.** As stated above, because Ms. Carter received all minimum wages and meal and rest periods as described above, Ms. Carter received compliant pay records. At all relevant times, Circle K provided Ms. Carter and all employees with biweekly wage

statements containing the information required by California Labor Code section 226(a). Thus, Ms. Carter cannot state a claim for failure to provide compliant wage statements, either on behalf of herself or others. Ms. Carter's wage statements include all hours worked, applicable hourly rates and the number of hours worked at each rate, itemized deductions, an employee identification number, Circle K's full legal name and address, and the inclusive dates of each pay period. Accordingly, Circle K did not willfully fail to maintain accurate employment records for Ms. Carter and Ms. Carter cannot state a claim, either on behalf of herself or others, for alleged violations of California Labor Code sections 226(a) and 1198.

- **Cure of Alleged Violations of Labor Code Sections 201, 202, and 203.** At all relevant times, Circle K provided Ms. Carter and all employees with timely pay upon discharge in accordance with California Labor Code sections 201, 202, and 203, or provided waiting time penalties as applicable. Ms. Carter was paid all wages owed on April 13, 2023. The last day she worked was on April 2, 2023, before she left on a leave of absence from which she never returned. Thus, Ms. Carter cannot state a claim for failure to timely pay wages upon discharge, either on behalf of herself or others. Because all wages and other compensation were paid when due, Ms. Carter cannot state a claim for failure to pay wages when due under California Labor Code §§ 201, 202, or 203 either on behalf of herself or others.
- **Cure of Alleged Violations of Labor Code Section 2802.** Ms. Carter's notice letter fails to specify the costs of her alleged business expenditures that she and other employees incurred that were not fully reimbursed under California Labor Code sections 2800 and 2802. Ms. Carter's notice letter also fails to identify the alleged business-related purposes that "necessitated" the use of her personal cellphone and personal vehicle in the first place. At all relevant times, Circle K's applicable policy has been to reimburse Ms. Carter and other employees for all necessary business expenses. Thus, Ms. Carter cannot state a claim for failure to reimburse business expenses when due under California Labor Code §§ 201, 202, or 203 either on behalf of herself or others.
- **Cure of Alleged Violations of Labor Code Section 1198.5 – Failure to Provide Employment Records.** Ms. Carter claims that Circle K failed to provide requested employment records in violation of California Labor Code sections 226, 432, and 1198.5. Circle K has a dedicated Human Resources team, including one just for its store employees, who routinely respond to such requests. Circle K responded to Ms. Carter's July 12, 2024 request for records on July 17, 2024. Thus, Ms. Carter cannot state a claim for alleged violations of California Labor Code sections 226, 432, 1198.5, either on behalf of herself or others.

As a result of Circle K's cure of the Labor Code violations alleged by Ms. Carter, Ms. Carter cannot state a claim for Unfair Competition under California Business and Professions Code sections 17200 *et seq.*, nor is she entitled to civil penalties under California Labor Code sections 201-204, 218.5, 226(a)(e), 226.7, 510, 512, 558, 1194, 1194.2, 1194.3, 1198, 1199, 2802 and 1198.5.

Additionally, the following allegations contained within Ms. Carter's notice letter are insufficient for Circle K or the Labor & Workforce Development Agency ("LWDA") to investigate any of Ms. Carter's claims. Some examples, without limitation, include:

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- Ms. Carter claims she and other “aggrieved employees” suffered various violations, but the notice letter fails to identify a single aggrieved employee or potential witness regarding any of the alleged claims. The notice letter also fails to specify the locations where other aggrieved employees work, as Circle K maintains numerous work sites across California.
- Ms. Carter’s notice letter alleges a violation of Labor Code section 510, Ms. Carter’s notice letter fails to specify any details that would indicate when and how often she and others were allegedly performing work over eight hours in a day or over 40 hours in a week, or over 12 hours in a day.
- Ms. Carter claims penalties under Labor Code section 204. However, at all relevant times, Circle K paid employees including Ms. Carter on a biweekly payroll schedule, and all wages were paid within seven calendar days following the close of each payroll period. Ms. Carter cannot state a claim, either on behalf of herself or others, under Labor Code § 204, because Ms. Carter’s pay schedule complied with the requirements. (See Lab. Code § 204(d) [“The requirements of this section shall be deemed satisfied by the payment of wages for weekly . . . payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”].)

In sum, Circle K denies all of the allegations in Ms. Carter’s notice letter, provides the information above to show that Circle K has always taken all reasonable steps necessary to remain in compliance with the Labor Code, and further notes that the letter fails to include facts sufficient to investigate the claims alleged against Circle K.

We thank you for your attention to this matter.

Respectfully,

A handwritten signature in dark ink, appearing to read "Maria C. Rodriguez", with a stylized, looping flourish extending to the right.

Maria C. Rodriguez