

1 Jeffrey M. Hamerling (Bar No. 91532)
jhamerling@archernorris.com
2 Alissa R. Pleau-Fuller (Bar No. 258907)
apleau-fuller@archernorris.com
3 ARCHER NORRIS
2033 North Main Street, Suite 800
4 Walnut Creek, California 94596-3759
Telephone: 925.930.6600
5 Facsimile: 925.930.6620

6 Nicole M. McLaughlin (Bar No. 272019)
nmclaughlin@archernorris.com
7 ARCHER NORRIS
777 South Figueroa Street, Suite 4250
8 Los Angeles, California 90017
Telephone: 213.437.4000
9 Facsimile: 213.437.4011

10 Attorneys for Plaintiff
CIRCLE K STORES INC., a Texas corporation

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 CIRCLE K STORES INC., a Texas
corporation,

16 Plaintiff,

17 v.

18 WALID HAWATMEH; MOUNER
19 RABADI,

20 Defendants.
21
22

Case No. 2:15-CV-7442

COMPLAINT FOR:

**(1) Breach of Contract –
Fuel/Franchise Agreements**

**(2) Breach of Contract –Incentive and
Amortization Agreement**

**(3) Breach of Contract –Promissory
Note**

(3) Inducing Breach of Contract

23
24 Comes now plaintiff Circle K Stores Inc. (“Circle K”), a Texas corporation,
25 and alleges against defendants WALID HAWATMEH, an individual, and
26 MOUNER RABADI, an individual, as follows:

27 **JURISDICTION**

28 1. This Court has jurisdiction over all claims under 28 U.S.C. § 1332

1 because the amount in controversy exceeds \$75,000.00, exclusive of interest and
2 costs, and Circle K is a citizen of a different state from each of the Defendants.

3 **THE PARTIES**

4 2. Plaintiff Circle K Stores Inc. is a corporation organized under the laws
5 of the State of Texas, with its principal place of business in Tempe, Arizona.

6 3. Circle K alleges, on information and belief, that defendant Walid
7 Hawatmeh ("Mr. Hawatmeh") is an individual domiciled in California.

8 4. Circle K alleges, on information and belief, that defendant Mouner
9 Rabadi ("Mr. Rabadi") is an individual domiciled in California.

10 5. Defendants Walid Hawatmeh and Mouner Rabadi are referred to
11 collectively herein as "Defendants."

12 **VENUE**

13 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)
14 because Walid Hawatmeh and Mouner Rabadi both, upon information and belief,
15 reside within the boundaries of the Central District, and a substantial part of the
16 events or omissions giving rise to the claim occurred in the Central District.

17 **GENERAL ALLEGATIONS**

18 7. Circle K is engaged in the marketing and distribution of various grades
19 of Mobil-branded and Exxon-branded fuel in Southern California through a variety
20 of dealers, pursuant to written franchise agreements. Circle K is a franchisor as
21 defined under the Petroleum Marketing Practices Act, 15 U.S.C. § 2801, *et seq.*
22 ("PMPA") and California Business and Professions Code § 20999.

23 **THE FUEL/FRANCHISE AGREEMENTS**

24 8. On or about August 19, 2013, Mr. Hawatmeh and Circle K entered
25 various separate, though interdependent, agreements by which Mr. Hawatmeh
26 bought Exxon –branded gasoline from Circle K for resale to the motoring public at
27 the fuel service station located at 400 West Palmdale Boulevard, Palmdale,
28 California 93551 (the "Premises"). As a Circle K franchisee purchasing and selling

1 Exxon-branded fuel, Mr. Hawatmeh entered into a (1) Complete Contract of Sale
2 fuel agreement (with Commodity Schedule) and (2) Right of First Refusal
3 (collectively referred to herein as the “Fuel/Franchise Agreements”), all with a term
4 commencing September 1, 2013. Copies of the Fuel/Franchise Agreements are
5 attached hereto as Exhibit 1 and incorporated herein as if fully set forth.

6 9. Section 38 of the Complete Contract of Sale provides for the recovery
7 of “attorneys’ fees, costs of suit and reasonable expenses incurred in order to
8 secure, defend or protect the rights inuring to the prevailing party...or to enforce
9 the terms thereof....”

10 10. With respect to the Fuel/Franchise Agreements, Mr. Hawatmeh agreed
11 that:

- 12 a. Mr. Hawatmeh would grant Circle K the right of first refusal to
13 acquire Mr. Hawatmeh’s leasehold interest in the Station and the
14 business thereon upon receipt of an offer from a third party to
15 purchase any of the foregoing.
- 16 b. Even if Circle K elected not to exercise its right of first refusal to
17 purchase Mr. Hawatmeh’s interest in the Premises and business,
18 Mr. Hawatmeh’s interest “shall not be transferred or assigned by
19 [Mr. Hawatmeh] in whole or in part, directly or indirectly, without
20 the prior written consent of [Circle K]....” (Sect. 18(a), Complete
21 Contract of Sale.)
- 22 c. During the 10 year term, Mr. Hawatmeh would purchase branded
23 fuel from Circle K, with the parties ultimately using Exxon
24 branded fuel, and would use the Premises only for the sale of such
25 branded fuel purchased from Circle K. Section 2 of the Complete
26 Contract of Sale provides that Circle K “shall be the exclusive
27 supplier of all [Mr. Hawatmeh’s] motor fuel product requirements
28 at the Premises.”

- 1 d. Mr. Hawatmeh agreed to purchase a minimum of 1,200,000
2 gallons of fuel from Circle K each year based each year based on
3 Circle K's "price in effect at the time and place of delivery to
4 dealers of the same class and in the same trade area" as set forth in
5 the Commodity Schedule. (Sects. 1 and 6, Commodity Schedule.)
- 6 e. Mr. Hawatmeh would refrain from selling non-Exxon-branded
7 motor fuel at the Premises and maintain the Premises in
8 accordance with the Exxon-brand standards and specifications,
9 including, but not limited to, style, color scheme, and layout.
- 10 f. If the Fuel/Franchise Agreements were terminated, Mr. Hawatmeh
11 would pay Circle K liquidated damages in the amount of the
12 greater "of three cents (\$0.03) per gallon multiplied by...the
13 minimum volume in gallons...that remain unpurchased" or "the
14 average monthly volume in gallons actually purchased by
15 Purchaser ... multiplied by the number of months remaining on the
16 Term of the Contract..." (Complete Contract of Sale, Sect. 24(g).)
- 17 g. That the availability of liquidated damages does not limit or
18 prejudice Circle K's right to collect its full monetary damages and
19 other relief. Circle K's actual damages resulting from Mr.
20 Hawatmeh's failure to purchase fuel exceed the amount of
21 liquidated damages, and will be established pursuant to proof at
22 trial.

23 11. As an inducement to Mr. Hawatmeh becoming a Circle K franchisee
24 and abiding by his contractual agreements, Circle K loaned Mr. Hawatmeh the sum
25 of \$260,000, pursuant to the terms of an Incentive and Amortization Agreement.
26 Pursuant to the Incentive and Amortization Agreement, Mr. Hawatmeh agreed to
27 repay the sum of \$260,000, plus 9% interest, to Circle K upon breach, minus any
28 amount "amortized" as of the date of that breach, pursuant to an amortization

1 schedule. A copy of the executed Incentive and Amortization Agreement is
2 attached hereto as Exhibit 2.

3 12. Mr. Hawatmeh executed a written Promissory Note under which
4 Circle K was to issue a loan to Mr. Hawatmeh in the amount of \$260,000, pursuant
5 to the terms of the Incentive and Amortization Agreement. In exchange, Mr.
6 Hawatmeh agreed to pay back the entire amount of the loan, with 9% per annum
7 interest compounded monthly, less any amount thereof forgiven under the Incentive
8 and Amortization Agreement, to Circle K. A copy of the executed Promissory
9 Agreement is included as Exhibit A to the Incentive and Amortization Agreement,
10 attached hereto as Exhibit 2.

11 **BREACH OF THE FUEL/FRANCHISE AGREEMENTS, INCENTIVE AND**
12 **AMORTIZATION AGREEMENT AND PROMISSORY NOTE**

13 13. In or about July 2015, Mr. Hawatmeh informed Circle K of his desire
14 to sell his gasoline station to Mr. Rabadi. Circle K reviewed the file Mr. Hawatmeh
15 submitted regarding the pending sale and notified Mr. Hawatmeh that Circle K
16 required additional documentation before the Premises could transfer ownership.

17 14. Upon information and belief, Mr. Hawatmeh transferred his interest in
18 the Premises to Mr. Rabadi without providing the documentation Circle K
19 requested and without Circle K's written consent.

20 15. In or about August 2015, Mr. Rabadi made representations to Circle K
21 that he was the owner and/or the entity in control of the Premises.

22 16. Beginning on or about August 6, 2015, Mr. Hawatmeh stopped
23 purchasing Exxon-branded fuel from Circle K and stopped paying Circle K for fuel
24 delivered by Circle K to the Premises.

25 17. As of August 13, 2015, the Exxon Marks and trade dress had been
26 removed from the Premises and replaced with "Shell" identifications and branding.
27 The removal of these Exxon brand elements and replacement with a non-Exxon
28 brand constitutes a failure to properly brand the Premises and renders it non-

1 compliant with various provisions of the Fuel/Franchise Agreements.

2 18. On or about August 20, 2015, Circle K's attorney sent a letter to Mr.
3 Rabadi notifying him that Circle K had not approved him as an assignee and that it
4 had come to Circle K's attention that Mr. Rabadi had intentionally induced Mr.
5 Hawatmeh to breach the Complete Contract of Sale and Right of First Refusal.

6 19. In August 2015, Circle K also sent a Notice of Branding Image Non-
7 Compliance/Cease and Desist Notice to Mr. Hawatmeh demanding that he cease
8 and desist selling non-Exxon branded fuel at the Premises and providing notice of
9 Circle K's intent to seek damages and/or preclude the operation of any gasoline
10 service station and convenience store operations at the Premises under
11 identifications other than Exxon.

12 20. Circle K never approved any assignment of the Fuel/Franchise
13 Agreements from Mr. Hawatmeh to Mr. Rabadi.

14 21. As of the date of the Complaint, there are eight years and one month of
15 remaining term on the Fuel/Franchise Agreements, and Mr. Hawatmeh purchased
16 only one load of fuel in August. Accordingly upon any termination of the
17 Fuel/Franchise Agreement Mr. Hawatmeh would owe Circle K in excess of
18 \$290,760 in liquidated damages.

19 22. Upon information and belief, Circle K's anticipated future actual
20 damages, recoverable under the Fuel/Franchise Agreement, substantially exceed
21 this sum. These amounts are exclusive of interest, late fees, and other charges
22 required to be paid under Mr. Hawatmeh's agreements with Circle K.

23 23. Pursuant to the terms of the Incentive and Amortization Agreement,
24 none of the \$260,000 loan has been forgiven. The balance of the full loan and
25 Promissory Note became due and payable upon default.

26 24. On information and belief, Mr. Hawatmeh is no longer involved in the
27 operation of the Premises and has apparently closed on the sale of his interest in the
28 Premises and the business thereon to Mr. Rabadi.

1 25. Circle K has performed all terms, conditions, covenants, and promises
2 required to be performed in accordance with the Fuel/Franchise Agreements,
3 Incentive and Amortization Agreement and Promissory Note.

4 **First Claim for Relief**

5 **Breach of Contract-Fuel/Franchise Agreements**

6 **(Against defendant Walid Hawatmeh only)**

7 26. Circle K re-alleges and incorporates herein by reference as though set
8 forth in full, all of the allegations in paragraphs 1 through 25 herein.

9 27. Mr. Hawatmeh breached the Fuel/Franchise Agreements by ceasing to
10 sell Exxon-branded gasoline from Circle K and by allowing the sale of non Exxon-
11 branded gasoline at the Premises.

12 28. Mr. Hawatmeh breached the Fuel/Franchise Agreements by refusing to
13 purchase the monthly minimum quantity of Exxon-branded fuel from Circle K.

14 29. Mr. Hawatmeh breached the Fuel/Franchise Agreements by failing to
15 maintain the Premises in accordance with Exxon-brand standards and
16 specifications.

17 30. On information and belief, Mr. Hawatmeh breached the Fuel/Franchise
18 Agreements by assigning his interest in the Premises and the Fuel/Franchise
19 Agreements to Mr. Rabadi, without the prior written consent of Circle K.

20 31. Circle K has performed all of its obligations under the Fuel/Franchise
21 Agreements.

22 32. As a direct and proximate result of Mr. Hawatmeh's breaches of his
23 Fuel/Franchise Agreements with Circle K, Circle K has sustained damages of at
24 least \$550,760, including, among other things, the following:

- 25 a. Damages, including actual and/or liquidated damages in the
26 amount of at least \$290,760;
27 b. For all lost profits and sales resulting from Mr. Hawatmeh's failure
28 to purchase Exxon-branded gasoline from Circle K as of the date

1 of trial.

2 **Second Claim for Relief**

3 **Breach of Incentive and Amortization Agreement**

4 **(Against defendant Walid Hawatmeh only)**

5 33. Circle K re-alleges and incorporates herein by reference as though set
6 forth in full, all of the allegations in paragraphs 1 through 32 herein.

7 34. Mr. Hawatmeh breached the Incentive and Amortization Agreement
8 by ceasing to sell Exxon-branded gasoline from Circle K and by allowing the sale
9 of non-Exxon-branded gasoline at the Premises.

10 35. By no longer complying with the Complete Contract of Sale, Mr.
11 Hawatmeh violated Sections 1(c)(ii),(iii) and (iv), and 2(c) of the Incentive and
12 Amortization Agreement.

13 36. Mr. Hawatmeh's breach or failure to satisfy those Sections constitutes
14 an Acceleration Event as defined by Sect. 2(c) of the Incentive and Amortization
15 Agreement.

16 37. Pursuant to Sect. 2(c) of the Incentive and Amortization Agreement,
17 upon the occurrence of the Acceleration Event, the \$260,000 and all accrued
18 interest has become immediately due and payable by Mr. Hawatmeh.

19 38. Mr. Hawatmeh has not paid this past due amount to Circle K and
20 therefore is in breach of the Incentive and Amortization Agreement.

21 39. Circle K has performed all of its obligations under the Incentive and
22 Amortization Agreement.

23 40. As a direct and proximate result of Mr. Hawatmeh's breach of the
24 Incentive and Amortization Agreement with Circle K, Circle K has sustained
25 damages of at least \$260,000 and any accrued interest.

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Third Claim for Relief

Breach of Secured Promissory Note

(Against defendant Walid Hawatmeh only)

41. Circle K re-alleges and incorporates herein by reference as though set forth in full, all of the allegations in paragraphs 1 through 40 herein.

42. Mr. Hawatmeh executed the written Promissory Note under which Circle K was to issue a loan to Mr. Hawatmeh in the amount of \$260,000. In exchange, Mr. Hawatmeh agreed to pay back the entire amount of the loan, with 9% per annum interest compounded monthly, less any amount thereof forgiven under the Incentive and Amortization Agreement, to Circle K.

43. After receipt of the executed Promissory Note, Circle K thereafter fully complied with all the things required of it by loaning funds in the amount of \$260,000 to Mr. Hawatmeh.

44. Mr. Hawatmeh failed to pay Circle K as required by the contract, and to this date has still not paid Circle K as required by the Promissory Note.

45. As a result of Mr. Hawatmeh's failure to comply with his obligations under this written agreement, Circle K has been damaged in excess of \$260,000, in an amount to be proved at time of trial.

Fourth Claim for Relief

Inducing Breach of Contract

(Against Mr. Rabadi only)

46. Circle K repeats and re-alleges paragraphs 1 through 45 above, and incorporates them by reference.

47. At all times relevant to this Complaint, upon information and belief, Mr. Rabadi was aware that Circle K and Mr. Hawatmeh were parties to the Fuel/Franchise Agreements that Circle K held a right of first refusal to purchase the business, and that Circle K's prior consent was required for assignment of the Fuel/Franchise Agreements to Mr. Rabadi. Notwithstanding this information, Mr.

1 Rabadi induced Mr. Hawatmeh to breach the Fuel/Franchise Agreements by
2 purchasing the business and Mr. Hawatmeh's interest in the Premises without
3 Circle K's approval.

4 48. Upon information and belief, Mr. Rabadi intended to cause the
5 Premises to be rebranded from an Exxon-branded station to a Shell-branded station,
6 although he was aware that such conduct would constitute a further breach of Mr.
7 Hawatmeh's obligations under the Fuel/Franchise Agreements.

8 49. When Mr. Rabadi rebranded the Premises as a Shell-branded station,
9 Circle K no longer was able to sell fuel to the Premises and lost the visibility of an
10 Exxon-branded station within that area.

11 50. Mr. Rabadi's conduct was a substantial factor in causing Circle K's
12 harm.

13 51. Further, Mr. Rabadi induced Mr. Hawatmeh to breach his agreement a
14 to operate the Premises as an Exxon-branded site, which has caused and is causing
15 harm to Circle K in the amount in excess of \$550,760.

16 52. Furthermore, Mr. Rabadi's actions were intentional, oppressive, and
17 performed with fraud or malice, and with conscious disregard of Circle K's rights,
18 justifying the award of punitive damages in an amount to be proven at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Circle K prays for judgment against Defendants, and each of
21 them, and for relief as follows:

22 **1. As to the First Claim for Relief:**

23 (a) For liquidated damages of no less than \$290,760.

24 (b) For compensatory and actual, consequential, and/or incidental
25 damages of not less than \$550,760, the exact amount to be determined according to
26 proof.

27 (c) For prejudgment remedies including a right to attach order.

28 **2. As to the Second Claim for Relief:**

1 (a) For damages of no less than \$260,000, plus interest, the exact amount
2 to be determined according to proof.

3 (b) For prejudgment remedies including a right to attach order.

4 **3. As to the Third Claim for Relief:**

5 (a) For damages of no less than \$260,000, plus interest, the exact amount
6 to be determined according to proof.

7 (b) For prejudgment remedies including a right to attach order.

8 **4. As to the Fourth Claim for Relief:**

9 (a) For compensatory and actual, consequential, and/or incidental
10 damages of not less than \$550,760, the exact amount to be determined according to
11 proof

12 (b) For punitive and exemplary damages according to proof at trial.

13 **5. As to All Claims for Relief**

14 (a) For an order awarding Circle K its reasonable attorneys' fees, costs,
15 and expenses incurred in prosecuting this action;

16 (b) For an order awarding Circle K pre- and post-judgment interest; and

17 (c) For an order awarding such other relief that the Court deems just and
18 proper.

19 Dated: September 23, 2015

ARCHER NORRIS

21 /s/Alissa R. Pleau-Fuller

22 Jeffrey M. Hamerling

23 Alissa R. Pleau-Fuller

24 Attorneys for Plaintiff

25 CIRCLE K STORES INC., a Texas
26 corporation