

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

CRAIG WEISS, JAMES ROWLAND, RYAN GOMEZ, JORGE IRAHETA, PARNY MILIEN, PATRICK ROE, ROBERT SCHRINER, SERGE SHAHINIAN, JOSHUA TARIFF, PHILLIP VIENER, DEREK MCELHANNON, ALEENA IQBAL, CHRISTOPHER SYHARATH, RUBEN SANTIAGO, EMIL MILISCI, AND MICHAEL LANTIS, individually, on behalf of all other persons similarly situated, and on behalf of the general public,

Plaintiff,

vs.

CARMAX SUPERSTORES CALIFORNIA, LLC, a limited liability company; CARMAX AUTO SUPERSTORES WEST COAST, INC., a corporation, and DOES 1-100, inclusive,

Defendants.

CASE NO.: SCV0036383
DEPARTMENT: 3

NOTICE OF CLASS ACTION SETTLEMENT

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Craig Weiss v. CarMax Superstores California, LLC, et al.*, Placer County Superior Court Case No. SCV0036383 (the “Action”).

This notice is to inform you of the proposed Settlement of the Action. The notice is also intended (i) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you; and (ii) to advise you of your rights and options with respect to the Settlement.

You are receiving this notice by order of the Court because the records of CarMax Auto Superstores California, LLC (erroneously sued as CarMax Superstores California, LLC) and CarMax Auto Superstores West Coast, Inc. (together, “CarMax”) indicate that you are a current or former CarMax employee who worked in California as a Sales Consultant and/or Sales Manager during the time period of September 4, 2012 to July 1, 2020, who has not already released any and all claims you may have possessed against CarMax (the “Class”). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the Settlement will **not** affect your employment with CarMax in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

Starting in September of 2015, certain CarMax employees in California began filing lawsuits in which they alleged violations of California wage-and-hour laws on a class and/or representative basis as to all of CarMax's current and former Sales Consultants in California, seeking unpaid wages, damages, statutory penalties, and civil penalties under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* ("PAGA") for alleged violations of California law including meal period violations, rest period violations, minimum wage violations, overtime violations, wage statement violations and failure to maintain records, failure to reimburse, unlawful deductions, payment of wages below the designated rate, failure to pay commission wages, failure to pay wages on designated pay dates, failure to pay wages upon termination, and unfair business practices. In November of 2018, certain other CarMax employees in California filed a lawsuit alleging the same types of claims under California law, but on behalf of all current and former CarMax employees in California, regardless of the position held. The individuals who are suing CarMax are referred to in this document as "Plaintiffs." In addition, beginning in 2018, a number of individuals began filing individual demands for arbitration against CarMax, alleging the same claims on their own behalves. Plaintiffs' attorneys—Christina Humphrey Law, P.C.; Tower Legal Group, P.C.; Whitehead Employment Law; McNicholas & McNicholas, LLP; and the Berenji Law Firm, APC—have been litigating the Action in court and arbitration prior to this settlement.

The lawsuits covered by this settlement are: (a) the "*Weiss* Lawsuit," which was first initiated by plaintiff Craig Weiss against CarMax in Placer County Superior Court on September 4, 2015, Case No. SCV0036383; (b) the "*Gomez* Lawsuit," which was first initiated against CarMax by plaintiffs Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriener, Serge Shahinian, Joshua Tariff, and Phillip Viener in Los Angeles County Superior Court on June 29, 2016, Case Nos. BC625611 and BC639173; (c) the "*Rowland* Lawsuit," which was first initiated against CarMax by plaintiff James Rowland in the U.S. District Court for the Eastern District of California on September 7, 2016, Case No. 2:16-cv-02135; and (d) the "*McElhannon* Lawsuit," which was first initiated against CarMax by plaintiffs Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, and Emil Milisci in Alameda County Superior Court on November 21, 2018, Case No. HG18929561.

As part of the settlement, CarMax has also agreed to allow Plaintiffs to add claims to the Action on behalf of a Class of California employees, some going back as far as September 4, 2012, for the alleged substantive legal violations stated above.

CarMax claims that the members of the Class have been paid all monies that were due to them, maintains that it has complied with California's wage-and-hour laws, and denies all wrongdoing.

The Court has not ruled on whether Plaintiffs' allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiffs and CarMax have negotiated a settlement whereby CarMax has agreed to pay a total of **\$6,518,000.00** to resolve the matter. As a Class Member, you are eligible to receive a portion of this amount.

This settlement is **not** an admission by CarMax of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All persons who worked for CarMax in California as a Sales Consultant and/or a Sales Manager at any time during the time period of September 4, 2012 to July 1, 2020 (the "Arbitration Class Period"), and who have filed an individual arbitration demand against CarMax that includes some or all of the claims alleged in the Action ("Arbitration Class Members").

All persons who worked for CarMax in California as a Sales Consultant and/or a Sales Manager at any time during the time period of September 4, 2014 to July 1, 2020 (the “Non-Arbitration Class Period”), who are not Arbitration Class Members, and who have not already released, litigated, and/or arbitrated (in whole or in part) any and all claims they may have possessed against CarMax (“Non-Arbitration Class Members”). According to CarMax’s records, you are a Non-Arbitration Class Member.

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. CarMax will pay Six Million Five Hundred Eighteen Thousand Dollars (\$6,518,000.00) to settle the claims of all Class Members.

B. A settlement administrator has been appointed by the Court to administer the settlement. The settlement administrator will pay from the \$6,518,000.00: (1) Plaintiffs’ counsel’s attorneys’ fees, up to the amount of \$2,281,300.00; (2) Plaintiffs’ costs of litigation, up to the amount of \$150,000.00; (3) The expenses of administering the settlement, up to the amount of \$31,000.00; (4) Enhancement awards of up to \$115,000.00 in total for the 16 named Plaintiffs; (5) Enhancement awards of up to \$565,000.00 in total for the 226 Arbitration Class Members other than the named Plaintiffs (\$2,500.00 each); and (6) A payment of \$225,000.00 to the California Labor & Workforce Development Agency, representing 75% of the \$300,000.00 allocated to the settlement of Plaintiffs’ claim for civil penalties under PAGA. In addition, funds will be deducted from the \$6,518,000.00 to cover amounts payable by CarMax for its share of employer payroll taxes and contributions, which is estimated to total \$166,000.00. The remainder of the \$6,518,000.00 will be paid to the Class Members in settlement of their individual claims (the “Class Payment”).

C. The Class Payment will be divided among all Class Members based on the estimated number of weeks worked for CarMax in California by each Class Member. That is, the Class Payment will be divided by the number of aggregate qualified weeks worked by all Class Members during the applicable Class Period to produce a “Weekly Settlement Value.” For Non-Arbitration Class Members, a “qualified week” is a week worked by a Non-Arbitration Class Member in California during the Non-Arbitration Class Period as a Sales Consultant or a Sales Manager. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of qualified weeks you worked for CarMax during the Non-Arbitration Class Period multiplied by the Weekly Settlement Value, less applicable withholdings to cover amounts payable by you and CarMax.

D. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release CarMax Auto Superstores California, LLC and CarMax Auto Superstores West Coast, Inc., and each of their current and former parent companies, subsidiary companies, related companies, affiliates, partnerships, joint ventures, and/or staffing agencies, and, with respect to each of them, all of their and/or such related entities’ predecessors and successors, and, with respect to each such entity, all of its past, present, and future employees, officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under, or in concert with any of the persons or entities listed in this subsection, and their successors (the “Released Parties”), from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiffs and/or the Non-Arbitration Class Members or any of their respective heirs, executors, administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents and/or representatives arising out of any claims that were encompassed in the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, and any claims which reasonably flow from the facts alleged in any of the following:

- The Complaint for Civil Penalties Under the Private Attorneys General Act of 2004 filed

by Craig Weiss, Placer County Superior Court Case No. SCV0036383 (Sept. 4, 2015);

- The Class Action Complaint for Damages filed by Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriner, Serge Shahinian, Joshua Tariff, and Phillip Viener, Los Angeles Superior Court Case No. BC625611 (June 29, 2016);
- The Complaint filed by James Rowland, U.S. District Court, Eastern District of California, Case No. 2:16-cv-02135 (Sept. 7, 2016);
- The Representative Complaint for Damages filed by Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriner, Serge Shahinian, Joshua Tariff, and Phillip Viener, Los Angeles Superior Court Case No. BC639173 (Nov. 1, 2016);
- The First Amended Class Action Complaint filed by James Rowland, U.S. District Court, Eastern District of California, Case No. 2:16-cv-02135 (Feb. 1, 2017);
- The First Amended Complaint for Civil Penalties Under the Private Attorneys General Act of 2004 filed by Craig Weiss and James Rowland, Placer County Superior Court Case No. SCV0036383 (Feb. 21, 2017);
- The Second Amended Complaint for Civil Penalties Under the Private Attorneys General Act of 2004 filed by Craig Weiss and James Rowland, Placer County Superior Court Case No. SCV0036383 (Aug. 14, 2017);
- The Class Action Complaint filed by Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, and Emil Milisci, Alameda County Superior Court, Case No. HG18929561 (Nov. 21, 2018);
- The First Amended Class Action Complaint filed by Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis, Alameda County Superior Court, Case No. HG18929561 (Jan. 31, 2019);
- The Second Amended Complaint for Damages for Violation of Labor Code § 2698 et seq. (Private Attorneys General Action § 2698 of 2004) filed by Aleena Iqbal and Emil Milisci, U.S. District Court, Northern District of California, Case No. 3:19-cv-00586-WHO (Mar. 20, 2019); and
- The Third Amended Class Action Complaint to filed by Craig Weiss, James Rowland, Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriner, Serge Shahinian, Joshua Tariff, Phillip Viener, Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis, Placer County Superior Court Case No. SCV0036383,

including, but not limited to: claims for unpaid wages (including claims for minimum wage and overtime compensation), meal and rest period premiums, unreimbursed business expenses, interest, penalties (including waiting time penalties pursuant to Labor Code section 203, pay stub penalties pursuant to Labor Code section 226, recordkeeping penalties pursuant to Labor Code section 1174, and civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code sections 2698, et seq.) (“PAGA”)), claims pursuant to Labor Code sections 200, 201, 202, 203, 204, 204.1, 206, 210, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802, the Industrial Welfare Commission Wage Orders relating to claims for unpaid hours worked, meal periods and rest breaks, provision and maintenance of tools and equipment, deductions from wages, and recordkeeping, and claims under Business and Professions Code sections 17200, et seq., claims for attorneys’ fees and costs, conversion, fraud, common count, and unfair business practices (the “Non-Arbitration Released Class Claims”). Non-Arbitration Released Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies

available at law or equity allegedly owed or available to the Non-Arbitration Class arising or reasonably flowing from any of the complaints in the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, as identified above, against the Released Parties for the time period from September 4, 2014 up to and including July 1, 2020. **You will be barred from prosecuting any of the Non-Arbitration Released Class Claims against the Released Parties.**

V. HOW MUCH COULD I RECEIVE UNDER THE SETTLEMENT?

Non-Arbitration Class Members who do not opt out are eligible to receive money from the Class Payment as an Individual Settlement Payment, which is calculated as described above in Paragraph III(C).

Your estimated gross Individual Settlement Payment from the Class Payment is «**EstAmount**». This is based on your total qualified workweeks in California during the Non-Arbitration Class Period as a Sales Consultant or a Sales Manager, which is «**Workweeks**» (based on CarMax's records).

VI. WHAT ARE MY OPTIONS?

A. *You may accept your share of the \$6,518,000.00 settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the settlement administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; **or**

B. *You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement.* If you choose to be excluded, by no later than October 26, 2020 (30 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to the settlement administrator, Weiss v. Carmax Superstores California c/o CPT Group, located at 50 Corporate Park, Irvine, CA 92606. In order to be considered valid, your request for exclusion **must** include your name, your address, a request for exclusion, and your signature.

C. *You may object to the settlement.* The procedures for objecting to the settlement are described below in Section VIII of this form.

VII. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The settlement administrator will calculate your share of the settlement and will issue you a check.

B. Thirty-three percent (33%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining sixty-seven percent (67%). You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the settlement administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VIII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on November 13, 2020, at 8:30 a.m., in Department 3 of the Placer County Superior Court, located at the Historic Courthouse, 101 Maple Street, Auburn, California 95603, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Counsel for Plaintiffs and the Class, whose contact information is below, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense.

IX. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the Settlement and telling the Court that you don't agree with the Settlement or some part of it. The Court will consider your views. To object, you must send a letter, which you must sign, saying that you object to the settlement of *Craig Weiss v. CarMax Superstores California, LLC, et al.*, Placer County Superior Court Case No. SCV0036383. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your CarMax employee ID number, your address, the specific reasons you object to the terms of the Settlement, and your signature. If you wish to speak at the Final Approval Hearing, you must also indicate in your objection letter that you intend to appear at the Final Approval Hearing.

In order to timely and effectively object, you must (a) file your objection letter with the Placer County Superior Court, located at the Hon. Howard G. Gibson Courthouse, 10820 Justice Center Drive, Roseville, California 95678; and (b) fax or mail the objection letter to the addresses listed below in Section X; the letter must be filed, and postmarked or faxed, on or before October 26, 2020 (*30 days after mailing*).

X. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may view a complete copy of the settlement agreement and updates at the website for this settlement, www.cptgroup.com/WeissSettlement. You may also view any papers filed in the Action on file with the Clerk of the Court. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the Placer County Superior Court, located at the Hon. Howard G. Gibson Courthouse, 10820 Justice Center Drive, Roseville, California 95678. Reference Case Number SCV0036383.

If you have any questions, you can call the Settlement administrator, CPT Group, at 1-888-664-1713.

XI. CONTACT INFORMATION

SETTLEMENT ADMINISTRATOR

PLEASE DIRECT ALL INQUIRIES TO CPT GROUP FIRST.

Weiss v. Carmax Superstores California,
c/o CPT Group, Inc.
50 Corporate Park, Irvine, CA 92606
Telephone: 1-888-664-1713
Facsimile: 1-949-419-3446
WEBSITE: www.cptgroup.com/WeissSettlement

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**PLEASE DO NOT CALL THE COURT, CARMAX, CARMAX'S CORPORATE
OFFICE AND MANAGERS, OR CARMAX'S ATTORNEYS REGARDING THIS
SETTLEMENT.**