

FILED
Superior Court of California
County of Placer

AUG 14 2020

Jake Chatters
Executive Officer & Clerk
By: K. Harding, Deputy

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

CRAIG WEISS and JAMES ROWLAND,
individuals, and other aggrieved employees,

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

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT AND
GRANTING PROVISIONAL CLASS
CERTIFICATION**

[Assigned for all purposes to
The Honorable Charles D. Wachob, Dept. 421]
Michael W. Jones

Action Filed: September 4, 2015
Trial Date: None set

1 This matter came on for hearing on August 7, 2020, at 8:30 a.m., upon the Motion for
2 Preliminary Approval of the proposed settlement of this action on the terms set forth in the Joint
3 Stipulation re: Class Action Settlement (the “Settlement” or “Stipulation”), attached as **Exhibit 1** to
4 the Declaration of Christina A. Humphrey (“Humphrey Dec.”), filed herewith. Having considered
5 the Settlement, all papers and proceedings held herein, and having reviewed the entire record in this
6 action, Case No. SCV0036383, entitled *Craig Weiss v. CarMax Superstores California, LLC, et al.*
7 (the “Action”), and good cause appearing, the Court finds that:

8 WHEREAS, plaintiffs Craig Weiss, James Rowland, Ryan Gomez, Jorge Iraheta, Parny
9 Milien, Patrick Roe, Robert Schriener, Serge Shahinian, Joshua Tariff, Phillip Viener, Derek
10 McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis
11 (collectively, “Plaintiffs”) have alleged claims against defendants CarMax Auto Superstores
12 California, LLC (erroneously sued as CarMax Superstores California, LLC) and CarMax Auto
13 Superstores West Coast, Inc. (together, “CarMax”), on behalf of themselves and on behalf of others
14 similarly situated, comprising either (a) “All persons who worked for CarMax Auto Superstores
15 California, LLC and/or CarMax Auto Superstores West Coast, Inc. in the State of California as a
16 Sales Consultant and/or a Sales Manager at any time during the Arbitration Class Period, and who
17 have filed an individual arbitration demand against CarMax Auto Superstores California, LLC and/or
18 CarMax Auto Superstores West Coast, Inc. that includes some or all of the claims alleged in the
19 *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, and are
20 listed on **Exhibit A** to the Joint Stipulation re: Class Action Settlement”; or (b) “All persons who
21 worked for CarMax Auto Superstores California, LLC and/or CarMax Auto Superstores West Coast,
22 Inc. in the State of California as a Sales Consultant and/or a Sales Manager at any time during the
23 Non-Arbitration Class Period, who are not listed on **Exhibit A** to the Joint Stipulation re: Class
24 Action Settlement, and who have not already released, litigated, and/or arbitrated (in whole or in
25 part) any and all claims they may have possessed against CarMax Auto Superstores California, LLC
26 and/or CarMax Auto Superstores West Coast, Inc.”; and

27 WHEREAS, Plaintiffs assert claims against CarMax for failure to pay minimum wage; failure
28 to pay overtime wages; payment of wages below the designated rate; failure to pay commission

1 wages; failure to provide meal periods or compensation in lieu thereof; failure to provide rest breaks
2 or compensation in lieu thereof; failure to provide compliant wage statements; failure to maintain
3 records; failure to reimburse business expenses; unlawful deductions from wages; failure to pay
4 wages on designated pay dates; failure to pay wages upon separation or termination; civil penalties
5 under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*
6 (“PAGA”); and unfair business practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and

7 WHEREAS, CarMax expressly denies the allegations of wrongdoing and violations of law
8 alleged in this Action, and further denies any liability whatsoever to Plaintiffs or to the Class
9 Members; and

10 WHEREAS, without admitting any liability, claim, or defense, Plaintiffs and CarMax
11 (collectively, the “Parties”) determined that it was mutually advantageous to settle this Action and
12 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

13 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
14 about July 1, 2020, which provides for a complete dismissal, with prejudice, of the claims asserted
15 in the Action against CarMax on the terms and conditions set forth in the Stipulation, subject to the
16 approval of this Court;

17 NOW, therefore, the Court grants preliminary approval of the Settlement, and

18 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

19 1. To the extent defined in the Joint Stipulation re: Class Action Settlement, attached as
20 **Exhibit 1** to the Humphrey Dec. and incorporated herein by reference, the terms in this Order shall
21 have the meanings set forth therein.

22 2. The Court has jurisdiction over the subject matter of this Action, Plaintiffs, CarMax,
23 and the Class.

24 3. The Court approves the filing of the Third Amended Class Action Complaint,
25 attached as **Exhibit 1** to the Declaration of James A. Clark (“Clark Dec.”), adding all of the Class
26 Representatives as class representatives, and adding Class claims against CarMax based on the same
27 factual and legal allegations underlying the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland*
28 Lawsuit, and/or the *McElhannon* Lawsuit, including, but not limited to, Class claims for meal period

1 violations, rest period violations, minimum wage violations, overtime violations, wage statement
2 violations and failure to maintain records, failure to reimburse, unlawful deductions, payment of
3 wages below the designated rate, failure to pay commission wages, failure to pay wages on
4 designated pay dates, failure to pay wages upon termination, and unfair business practices. The
5 Court expressly acknowledges and determines that CarMax is deemed to have denied, generally and
6 specifically, each and every allegation and claim in the Third Amended Class Action Complaint
7 without the necessity of filing an Answer thereto.

8 4. The Arbitration Class is defined as follows: "All persons who worked for CarMax
9 Auto Superstores California, LLC and/or CarMax Auto Superstores West Coast, Inc. in the State of
10 California as a Sales Consultant and/or a Sales Manager at any time during the Arbitration Class
11 Period, and who have filed an individual arbitration demand against CarMax Auto Superstores
12 California, LLC and/or CarMax Auto Superstores West Coast, Inc. that includes some or all of the
13 claims alleged in the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the
14 *McElhannon* Lawsuit, and are listed on **Exhibit A** to the Joint Stipulation re: Class Action
15 Settlement."

16 5. The Arbitration Class Period is defined as September 4, 2012 to July 1, 2020.

17 6. The Non-Arbitration Class is defined as follows: "All persons who worked for
18 CarMax Auto Superstores California, LLC and/or CarMax Auto Superstores West Coast, Inc. in the
19 State of California as a Sales Consultant and/or a Sales Manager at any time during the Non-
20 Arbitration Class Period, who are not listed on **Exhibit A** to the Joint Stipulation re: Class Action
21 Settlement, and who have not already released, litigated, and/or arbitrated (in whole or in part) any
22 and all claims they may have possessed against CarMax Auto Superstores California, LLC and/or
23 CarMax Auto Superstores West Coast, Inc."

24 7. The Non-Arbitration Class Period is defined as September 4, 2014 to July 1, 2020.

25 8. The Court has determined that the intended notice to be given to the Class fully and
26 accurately informs all persons in the Class of all material elements of the proposed Settlement,
27 constitutes the best notice practicable under the circumstances, and constitutes valid, due, and
28 sufficient notice to all Class Members.

1 9. The Court hereby grants preliminary approval of the Settlement and Stipulation as
2 fair, reasonable, and adequate in all respects to the Class Members and ORDERS the parties to
3 consummate the Settlement in accordance with the terms of the Stipulation.

4 10. The plan of distribution as set forth in the Stipulation providing for the distribution of
5 the Net Settlement Amount to Settlement Class Members is preliminarily approved as being fair,
6 reasonable, and adequate.

7 11. The Court preliminarily appoints as Class Counsel the following attorneys: (i)
8 Christina Humphrey Law, P.C., located at 8330 Allison Avenue, Suite C, La Mesa, California 91942,
9 and all of its lawyers, specifically including, but not limited to, Christina A. Humphrey; (ii) Tower
10 Legal Group, P.C., located at 11335 Gold Express Drive, Suite 105, Sacramento, California 95670,
11 and all of its lawyers, specifically including, but not limited to, James Clark; (iii) Whitehead
12 Employment Law, located at 15615 Alton Pkwy., Suite 175, Irvine, California 92618, and all of its
13 lawyers, specifically including, but not limited to, Jacob N. Whitehead; (iv) McNicholas &
14 McNicholas, LLP, located at 10866 Wilshire Blvd., Suite 1400, Los Angeles, California 90024, and
15 all of its lawyers, specifically including, but not limited to, Patrick McNicholas; and (v) the Berenji
16 Law Firm, APC, located at 8383 Wilshire Boulevard, Suite 708, Beverly Hills, California 90211,
17 and all of its lawyers, specifically including, but not limited to, Shadie L. Berenji.

18 12. The Court preliminarily approves the payment of attorneys' fees in the amount of
19 \$2,281,300.00 to Class Counsel, which shall be paid from, and not in addition to, the Total Class
20 Action Settlement Amount.

21 13. The Court preliminarily approves the payment of attorneys' costs in the amount of
22 \$150,000.00 to Class Counsel, which shall be paid from, and not in addition to, the Total Class
23 Action Settlement Amount.

24 14. The Court preliminarily approves a payment in the amount of \$225,000.00 to the
25 California Labor & Workforce Development Agency, representing the State of California's portion
26 of civil penalties under PAGA, which shall be paid from, and not in addition to, the Total Class
27 Action Settlement Amount.

1 15. The Court preliminarily approves the payment of reasonable claims administration
2 costs to the Claims Administrator, CPT Group, in the amount of \$31,000.00 [not to exceed
3 \$31,000.00], which shall be paid from, and not in addition to, the Total Class Action Settlement
4 Amount.

5 16. The Court preliminarily approves the following enhancement awards, all of which
6 amounts shall be paid from, and not in addition to, the Total Class Action Settlement Amount:

- 7 a. An enhancement award to Plaintiff and class representative Craig Weiss in the
8 amount of \$15,000.00, which amount shall be paid from, and not in addition to, the
9 Total Class Action Settlement Amount;
- 10 b. An enhancement award to Plaintiff and class representative James Rowland in the
11 amount of \$15,000.00, which amount shall be paid from, and not in addition to, the
12 Total Class Action Settlement Amount;
- 13 c. An enhancement award to Plaintiff and class representative Ryan Gomez in the
14 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
15 Total Class Action Settlement Amount;
- 16 d. An enhancement award to Plaintiff and class representative Jorge Iratieta in the
17 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
18 Total Class Action Settlement Amount;
- 19 e. An enhancement award to Plaintiff and class representative Parny Milien in the
20 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
21 Total Class Action Settlement Amount;
- 22 f. An enhancement award to Plaintiff and class representative Patrick Roe in the amount
23 of \$5,000.00, which amount shall be paid from, and not in addition to, the Total Class
24 Action Settlement Amount;
- 25 g. An enhancement award to Plaintiff and class representative Robert Schrinier in the
26 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
27 Total Class Action Settlement Amount;
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- 1 h. An enhancement award to Plaintiff and class representative Serge Shahinian in the
2 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
3 Total Class Action Settlement Amount;
- 4 i. An enhancement award to Plaintiff and class representative Joshua Tariff in the
5 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
6 Total Class Action Settlement Amount;
- 7 j. An enhancement award to Plaintiff and class representative Phillip Viener in the
8 amount of \$5,000.00, which amount shall be paid from, and not in addition to, the
9 Total Class Action Settlement Amount;
- 10 k. An enhancement award to Plaintiff and class representative Derek McElhannon in the
11 amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
12 Total Class Action Settlement Amount;
- 13 l. An enhancement award to Plaintiff and class representative Aleena Iqbal in the
14 amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
15 Total Class Action Settlement Amount;
- 16 m. An enhancement award to Plaintiff and class representative Emil Milisci in the
17 amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
18 Total Class Action Settlement Amount;
- 19 n. An enhancement award to Plaintiff and class representative Christopher Syharath in
20 the amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
21 Total Class Action Settlement Amount;
- 22 o. An enhancement award to Plaintiff and class representative Ruben Santiago in the
23 amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
24 Total Class Action Settlement Amount; and
- 25 p. An enhancement award to Plaintiff and class representative Michael Lantis in the
26 amount of \$7,500.00, which amount shall be paid from, and not in addition to, the
27 Total Class Action Settlement Amount.
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17. The Court preliminarily approves enhancement awards to Arbitration Class Members, other than the Class Representatives, in the amount of \$2,500.00 each to recognize their additional contributions to the case, all of which amounts shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

18. This Preliminary Approval Order and the Stipulation, and all papers related thereto, are not, and shall not be construed to be, an admission by CarMax of any liability, claim, or wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or wrongdoing in this Action or in any other proceeding.

19. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation, and each party shall retain his or its rights to proceed with litigation of the Action.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: Aug. 14, 2020

Hon. ~~Charles D. Wachob~~ *Michael W. Jones*
Placer County Superior Court Judge