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LLC) and CARMAX AUTO SUPERSTORES WEST COAST, INC.

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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

**JOINT STIPULATION RE: CLASS
ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Charles D. Wachob, Dep't 42]

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

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Attorneys for Plaintiffs

1 **TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL**
2 **OF RECORD:**

3 This Joint Stipulation re: Class Action Settlement (hereinafter, “Stipulation,” “Agreement,”
4 or “Settlement”) is made and entered into by and between plaintiffs Craig Weiss, James Rowland,
5 Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schrinier, Serge Shahinian, Joshua
6 Tariff, Phillip Viener, Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago,
7 Emil Milisci, and Michael Lantis (collectively, “Plaintiffs”), on behalf of themselves and on behalf
8 of others similarly situated; and defendants CarMax Auto Superstores California, LLC
9 (erroneously sued as CarMax Superstores California, LLC) and CarMax Auto Superstores West
10 Coast, Inc. (together, “CarMax”), hereinafter collectively referred to as the “Parties.” Subject to
11 the approval of the Court, the matter of *Craig Weiss v. CarMax Superstores California, LLC, et al.*,
12 Placer County Superior Court Case No. SCV0036383 (the “Action”), is hereby being compromised
13 and settled pursuant to the terms and conditions set forth in this Stipulation. This Settlement shall
14 be binding on Plaintiffs, the proposed class described herein, CarMax, and its respective counsel,
15 subject to the terms and conditions hereof and the approval of the Court.

16 **THE PARTIES STIPULATE AND AGREE** as follows:

17 **I. DEFINITIONS**

18 1. The following terms, as used throughout this Stipulation, are defined as follows:

19 a) Action. The term “Action” shall mean and refer to the legal action pending
20 in the Superior Court of California for the County of Placer, Case No. SCV0036383,
21 entitled *Craig Weiss v. CarMax Superstores California, LLC, et al.*

22 b) Arbitration Class Members. The term “Arbitration Class Members” shall
23 mean all persons who worked for CarMax Auto Superstores California, LLC and/or
24 CarMax Auto Superstores West Coast, Inc. in the State of California as a Sales Consultant
25 and/or a Sales Manager at any time during the Arbitration Class Period, and who have filed
26 an individual arbitration demand against CarMax Auto Superstores California, LLC and/or
27 CarMax Auto Superstores West Coast, Inc. that includes some or all of the claims alleged
28 in the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon*

1 Lawsuit, and are listed on the attached **Exhibit A**. Arbitration Class Members shall not
2 include any individuals who are not listed on **Exhibit A**.

3 c) Arbitration Class Period. The term “Arbitration Class Period” shall mean
4 the time period from September 4, 2012 to the date on which this Stipulation has been
5 executed by all Parties.

6 d) CarMax. The term “CarMax” shall mean and refer collectively to CarMax
7 Auto Superstores California, LLC and CarMax Auto Superstores West Coast, Inc.

8 e) CarMax’s Counsel. The term “CarMax’s Counsel” shall refer, collectively,
9 to Jack S. Sholkoff and Jennifer L. Katz of Ogletree, Deakins, Nash, Smoak & Stewart,
10 P.C., located at 400 South Hope Street, Suite 1200, Los Angeles, CA 90071.

11 f) Check Cashing Deadline. The term “Check Cashing Deadline” shall mean
12 one hundred eighty (180) days after an Individual Settlement Award is issued to a Class
13 Member by check.

14 g) Class. The term “Class” shall mean and refer, collectively, to all Class
15 Members, including all Arbitration Class Members and all Non-Arbitration Class Members.

16 h) Class Counsel. The term “Class Counsel” shall refer, collectively, to (i)
17 Christina Humphrey Law, P.C., located at 8330 Allison Avenue, Suite C, La Mesa,
18 California 91942, and all of its lawyers, specifically including, but not limited to, Christina
19 A. Humphrey; (ii) Tower Legal Group, P.C., located at 11335 Gold Express Drive, Suite
20 105, Sacramento, California 95670, and all of its lawyers, specifically including, but not
21 limited to, James Clark; (iii) Whitehead Employment Law, located at 15615 Alton Pkwy.,
22 Suite 175, Irvine, California 92618, and all of its lawyers, specifically including, but not
23 limited to, Jacob N. Whitehead; (iv) McNicholas & McNicholas, LLP, located at 10866
24 Wilshire Blvd., Suite 1400, Los Angeles, California 90024, and all of its lawyers,
25 specifically including, but not limited to, Patrick McNicholas; and (v) the Berenji Law
26 Firm, APC, located at 8383 Wilshire Boulevard, Suite 708, Beverly Hills, California
27 90211, and all of its lawyers, specifically including, but not limited to, Shadie L. Berenji.

28 i) Class Members. The term “Class Members” shall mean and include any and

all members of the Arbitration Class and the Non-Arbitration Class.

j) Class Representatives. The term “Class Representatives” shall mean and refer, collectively, to plaintiffs 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. The term “Class Representatives” shall be synonymous with the term “Plaintiffs.”

k) Court. The term “Court” shall refer to the Honorable Charles D. Wachob of the Superior Court of California for the County of Placer, before whom the Action is pending.

l) Document Receipt Deadline. The term “Document Receipt Deadline” shall mean thirty (30) days after the Notices are mailed to Class Members by the Settlement Administrator.

m) Effective Date. The term “Effective Date” shall mean the date on which the Court’s Judgment becomes final, as further detailed in Paragraph 8, herein.

n) Final Settlement Approval Hearing. The term “Final Settlement Approval Hearing” shall mean and refer to a hearing before the Court to finally approve the Settlement as fair, reasonable, and adequate, as further detailed in Paragraph 28, herein.

o) Final Settlement Papers. The term “Final Settlement Papers” shall refer to and include a Motion for Final Approval of the Settlement, Motion for Attorneys’ Fees and Costs, and [Proposed] Final Settlement Order.

p) The Gomez Lawsuit. The term “Gomez Lawsuit” shall mean and refer to the lawsuits first initiated against CarMax by plaintiffs Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriner, Serge Shahinian, Joshua Tariff, and Phillip Viener in Los Angeles County Superior Court on June 29, 2016, assigned and proceeding as Case Nos. BC625611 and BC639173. The *Gomez* Lawsuit was dismissed without prejudice by the Court on March 11, 2020.

q) Individual Settlement Award. The term “Individual Settlement Award” shall

mean a Class Member's share of the Net Settlement Amount, as further detailed in Paragraph 18, subparagraph (g), herein.

r) The *McElhannon* Lawsuit. The term "*McElhannon* Lawsuit" shall mean and refer to the lawsuit 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, assigned and proceeding as Case No. HG18929561. The Court dismissed the *McElhannon* Lawsuit without prejudice on or about March 11, 2020.

s) Net Settlement Amount. The term "Net Settlement Amount" shall mean and refer to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions for attorneys' fees and actual costs to Class Counsel, the claims administration costs and fees, the Class Representatives' enhancement awards, the Arbitration Class Member enhancement awards, the PAGA Allocation, and CarMax's share of payroll taxes. The Net Settlement Amount is the maximum amount that will be available for distribution to Class Members.

t) Non-Arbitration Class Members. The term "Non-Arbitration Class Members" shall mean all persons who worked for CarMax Auto Superstores California, LLC and/or CarMax Auto Superstores West Coast, Inc. in the State of California as a Sales Consultant and/or a Sales Manager at any time during the Non-Arbitration Class Period, who are not listed on **Exhibit A**, 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 Auto Superstores California, LLC and/or CarMax Auto Superstores West Coast, Inc.

u) Non-Arbitration Class Period. The term "Non-Arbitration Class Period" shall mean the time period from September 4, 2014 to the date on which this Stipulation has been executed by all Parties.

v) Notice. The term "Notice" shall mean, together, the Notice of Class Action Settlement (Arbitration Class Members), attached hereto as **Exhibit B**, and the Notice of Class Action Settlement (Non-Arbitration Class Members), attached hereto as **Exhibit C**.

1 w) Notice of Objection. A document that is created by any Class Member who
2 wishes to object to the Settlement as set forth herein and is submitted to the Settlement
3 Administrator and/or counsel for the Parties by first class U.S. Mail, or equivalent, postage
4 paid and postmarked, by no later than the Document Receipt Deadline, which is thirty (30)
5 calendar days after the date that the Settlement Administrator originally mails Notices to
6 Class Members. The Settlement Administrator shall notify Class Counsel and CarMax's
7 Counsel of its receipt of all valid Notices of Objection within three (3) business days after
8 having received each such Notice of Objection.

9 x) PAGA Allocation. "PAGA Allocation" means the amount of Three Hundred
10 Thousand Dollars (\$300,000.00) to be allocated to resolve the Class Members' claims
11 arising under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code
12 §§ 2698, *et seq.* ("PAGA") in settlement of alleged but disputed PAGA civil penalties.
13 Pursuant to PAGA, 75 percent of the PAGA Allocation, or Two Hundred Twenty-Five
14 Thousand Dollars (\$225,000.00), shall be paid to the State of California Labor and
15 Workforce Development Agency (the "LWDA"), with the remaining 25 percent, or
16 Seventy-Five Thousand Dollars (\$75,000.00), allocated to the Net Settlement Amount.

17 y) Parties. The term "Parties" shall mean and refer collectively to plaintiffs
18 Craig Weiss, James Rowland, Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe,
19 Robert Schriner, Serge Shahinian, Joshua Tariff, Phillip Viener, Derek McElhannon,
20 Aleena Iqbal, Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis, on
21 behalf of the Class, and CarMax.

22 z) Plaintiffs. The term "Plaintiffs" shall mean and refer to plaintiffs Craig
23 Weiss, James Rowland, Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert
24 Schriner, Serge Shahinian, Joshua Tariff, Phillip Viener, Derek McElhannon, Aleena Iqbal,
25 Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis. The term
26 "Plaintiffs" shall be synonymous with the term "Class Representatives."

27 aa) Preliminary Approval Date. The term "Preliminary Approval Date" shall
28 mean the date that the Court enters the Preliminary Approval Order.

1 bb) Released Parties. The term “Released Parties” shall mean and refer to
2 CarMax Auto Superstores California, LLC and CarMax Auto Superstores West Coast, Inc.,
3 and each of their current and former parent companies, subsidiary companies, related
4 companies, affiliates, partnerships, joint ventures, and/or staffing agencies, and, with
5 respect to each of them, all of their and/or such related entities’ predecessors and
6 successors, and, with respect to each such entity, all of its past, present, and future
7 employees, officers, partners, principals, directors, stockholders, owners, representatives,
8 assigns, attorneys, agents, insurers, employee benefit programs (and the trustees,
9 administrators, fiduciaries, and insurers of such programs), and any other persons acting by,
10 through, under, or in concert with any of the persons or entities listed in this subsection, and
11 their successors.

12 cc) Request for Exclusion. A written statement submitted by a Class Member
13 requesting exclusion from the Settlement, submitted to the Settlement Administrator by first
14 class U.S. Mail, or equivalent, postage paid and postmarked, by no later than the Document
15 Receipt Deadline, which is thirty (30) calendar days after the date that the Settlement
16 Administrator originally mails Notices to Class Members. To be valid, the written Request
17 for Exclusion must include (i) the Class Member’s name, (ii) the Class Member’s address,
18 (iii) a request for exclusion, and (iv) the Class Member’s signature.

19 dd) The Rowland Lawsuit. The term “Rowland Lawsuit” shall mean and refer to
20 the lawsuit first initiated against CarMax by plaintiff James Rowland in the U.S. District
21 Court for the Eastern District of California on September 7, 2016, assigned Case No. 2:16-
22 cv-02135. The *Rowland* Lawsuit was dismissed without prejudice on April 11, 2019.

23 ee) Third Amended Class Action Complaint. The term “Third Amended Class
24 Action Complaint” shall mean and refer to the Third Amended Class Action Complaint to
25 be filed to add Class claims and consolidate all matters pertinent to this Settlement before
26 the Court. A copy of the proposed Third Amended Class Action Complaint agreed upon by
27 the Parties is attached hereto as **Exhibit D**.

28 ff) Settlement Administrator. The term “Settlement Administrator” shall refer

1 to CPT Group, or any other third-party class action settlement administrator agreed to by
2 the Parties and approved by the Court for the purposes of administering this Settlement.

3 gg) Stipulation. The term “Stipulation” shall refer to this document, entitled
4 “Joint Stipulation re: Class Action Settlement,” including all exhibits attached hereto.

5 hh) Total Class Action Settlement Amount. The term “Total Class Action
6 Settlement Amount” shall mean Six Million Five Hundred Eighteen Thousand Dollars
7 (\$6,518,000.00). This is the maximum possible amount that may be paid by CarMax to
8 resolve this Action. The Total Class Action Settlement Amount is a common fund, non-
9 reversionary amount. The Total Class Action Settlement Amount is inclusive of any and all
10 employer payroll withholdings, as further defined in Paragraph 18, subparagraph (g), of this
11 Stipulation.

12 ii) The Weiss Lawsuit. The term “The Weiss Lawsuit” shall mean and refer to
13 the lawsuit first initiated by plaintiff Craig Weiss against CarMax in Placer County
14 Superior Court on September 4, 2015, assigned and proceeding as Case No. SCV0036383.

15 2. Date of This Stipulation. This Stipulation is made as of the date set forth below by
16 and between Plaintiffs, on behalf of themselves and the Class, on the one hand, and CarMax, on the
17 other hand, subject to the approval of the Court.

18 **I. BACKGROUND OF THE LEGAL ACTION**

19 3. Brief Procedural History. The relevant procedural history of the various lawsuits
20 now comprising the Action is described briefly as follows:

21 a) The Weiss Lawsuit. Plaintiff Craig Weiss (“Weiss”) filed the instant Action
22 in Placer County Superior Court on September 4, 2015, alleging a single cause of action
23 pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code
24 §§ 2698, *et seq.* (“PAGA”); the lawsuit was based on a PAGA letter to the California Labor
25 & Workforce Development Agency (“LWDA”) dated September 3, 2015. The group of
26 aggrieved employees Weiss purported to represent in his initial Complaint was Sales
27 Consultants working for CarMax in California, and, in his initial Complaint, Weiss alleged
28 PAGA claims against CarMax pursuant to PAGA for unpaid minimum wages, failure to

1 pay wages below the designated rate, failure to reimburse for necessary business expenses,
2 failure to provide compliant wage statements, waiting time penalties, and underpaid wages
3 pursuant to Labor Code § 558. On February 19, 2016, CarMax filed an Answer to Weiss’
4 Complaint for Civil Penalties Under the Private Attorneys General Act of 2004. On August
5 24, 2016, Weiss sent an amended PAGA letter to the LWDA in which he added James
6 Rowland (“Rowland”) as a representative. Thereafter, Weiss and Rowland together filed a
7 First Amended Complaint for Civil Penalties Under the Private Attorneys General Act of
8 2004 in this Action on or about February 21, 2017, adding Rowland as a named plaintiff.
9 On March 27, 2017, CarMax filed an Answer to the First Amended Complaint. On August
10 14, 2017, Weiss and Rowland then filed a Second Amended Complaint for Civil Penalties
11 Under the Private Attorneys General Act of 2004. In the Second Amended Complaint,
12 Weiss and Rowland added references to meal period violations. In response to the Second
13 Amended Complaint, CarMax moved that Weiss and Rowland had to arbitrate their
14 individual unpaid wages claims pursuant to Labor Code § 558 (“Section 558”). After the
15 Court ordered that Weiss’ and Rowland’s individual unpaid wage claims pursuant to
16 Section 558 had to be arbitrated pursuant to the parties’ binding arbitration agreement, in
17 accordance with the authority in *Esparza v. KS Industries, LP*, 13 Cal. App. 5th 1228
18 (2017), Weiss and Rowland sought a Petition for Writ of Mandate in the Court of Appeal,
19 which was summarily denied. Weiss and Rowland then successfully petitioned for review
20 by the California Supreme Court, which immediately stayed the action pending disposition
21 of a related issue in the matter of *Lawson v. ZB, N.A.*, 18 Cal. App. 5th 705 (2017)
22 (“*Lawson*”). On September 12, 2019, the California Supreme Court issued its ruling in
23 *Lawson*, holding that employees cannot recover unpaid wages through a PAGA claim.
24 Ultimately, on December 26, 2019, at the Parties’ request, the Court of Appeal dismissed
25 Weiss’ and Rowland’s Petition for Writ of Mandate, thereby reinstating the trial court’s
26 order compelling Weiss and Rowland to arbitrate their wage claims contained in the Second
27 Amended Complaint. Concurrently with the Court of Appeal’s remittitur, the Parties
28 resolved their dispute.

1 b) The Gomez Lawsuit. Plaintiffs Ryan Gomez, Jorge Iraheta, Parny Milien,
2 Patrick Roe, Robert Schriner, Serge Shahinian, Joshua Tariff, and Phillip Viener
3 (collectively, the “*Gomez Plaintiffs*”) filed a Class Action Complaint for Damages in Los
4 Angeles County Superior Court on June 29, 2016, Case No. BC625611, alleging individual
5 and putative class claims against CarMax on behalf of themselves and other Sales
6 Consultants working for CarMax in California. The *Gomez Plaintiffs* alleged claims
7 against CarMax for unpaid minimum wages, failure to pay statutory/contractual wages,
8 failure to pay overtime, failure to provide meal periods and rest breaks, failure to reimburse
9 for necessary business expenses, failure to provide compliant wage statements, waiting time
10 penalties, and unfair competition. On August 30, 2016, CarMax filed an Answer to the
11 *Gomez Plaintiffs’* Class Action Complaint for Damages. At a hearing held on October 19,
12 2016, the court granted CarMax’s motion to compel arbitration, ordering the *Gomez*
13 *Plaintiffs’* individual claims to arbitration and dismissing their class claims. Subsequently,
14 on November 1, 2016, the *Gomez Plaintiffs* filed a separate PAGA-only action in Los
15 Angeles County Superior Court, Case No. BC639173, alleging in their Representative
16 Complaint for Damages the same violations pursuant to PAGA. On December 2, 2016,
17 CarMax filed an Answer to the *Gomez Plaintiffs’* Representative Complaint for Damages.
18 The two matters were subsequently ordered related, and, on November 30, 2016 the PAGA
19 claim was stayed. Once the individual claims of the *Gomez Plaintiffs* were in arbitration,
20 the parties agreed to and did resolve each matter pursuant to statutory offers to compromise.
21 Litigation on the PAGA claim was later stayed at the parties’ request pending the outcome
22 of *Lawson*. The Parties agreed to stipulate to dismiss the *Gomez* action without prejudice
23 and toll the statute of limitations on any claims asserted therein until the Third Amended
24 Class Action Complaint is filed in the *Weiss* lawsuit. The Court entered the dismissal order
25 on or about March 11, 2020.

26 c) The Rowland Lawsuit. In addition to being added on as a named plaintiff in
27 the *Weiss* Lawsuit, Rowland filed his own separate individual and class action lawsuit
28 against CarMax on September 7, 2016, in the Eastern District of California, Case No. 2:16-

1 cv-02135. Rowland purported to represent all CarMax Sales Consultants in California
2 going back to September 7, 2012. Rowland alleged individual and putative class claims
3 against CarMax for unpaid minimum wages, failure to pay wages below the designated
4 rate, failure to provide meal periods and rest breaks, failure to reimburse for necessary
5 business expenses, failure to provide compliant wage statements, waiting time penalties,
6 and unfair competition. Rowland filed a First Amended Class Action Complaint on
7 February 1, 2017, but no changes were made to the claims alleged. CarMax moved to
8 compel arbitration of Rowland's individual claims and to dismiss Rowland's putative class
9 claims, pursuant to the parties' binding arbitration agreement. On April 11, 2019, the court
10 granted CarMax's motion and dismissed the *Rowland* Lawsuit without prejudice.

11 d) The *McElhannon* Lawsuit. Plaintiffs Derek McElhannon ("McElhannon"),
12 Aleena Iqbal ("Iqbal"), Christopher Syharath ("Syharath"), Ruben Santiago ("Santiago"),
13 and Emil Milisci ("Milisci") filed a lawsuit in Alameda County Superior Court on
14 November 21, 2018 entitled *McElhannon, et al. v. CarMax Auto Superstores West Coast,*
15 *Inc., et al.*, Case No. HG18929561. As originally filed, the Class Action Complaint in the
16 *McElhannon* Lawsuit purported to allege putative class claims against CarMax on behalf of
17 all California employees for failure to pay all wages due upon termination, failure to
18 provide accurate wage statements, failure to provide meal breaks and rest breaks, failure to
19 pay overtime, failure to maintain records of all hours worked, failure to pay wages for all
20 hours worked, failure to timely pay wages earned when due, failure to reimburse for
21 necessary business expenses, and unfair competition. On January 31, 2019, McElhannon,
22 Iqbal, Syharath, Santiago, Milisci, and Michael Lantis ("Lantis") (together, the
23 "*McElhannon* Plaintiffs") filed a First Amended Class Action Complaint adding Lantis as a
24 named plaintiff and adding a PAGA claim. On February 1, 2019, having no knowledge of
25 the filing of the First Amended Class Action Complaint in the *McElhannon* Lawsuit,
26 CarMax filed its Answer to the *McElhannon* Plaintiffs' original Complaint and removed the
27 matter to the Northern District of California, N.D. Cal. Case No. 3:19-cv-00586-WHO.
28 Thereafter, CarMax moved to compel arbitration of the *McElhannon* Plaintiffs' individual

1 claims and for dismissal of the putative class claims. On March 20, 2019, instead of
2 opposing CarMax's motion, Iqbal and Milisci filed a Second Amended Complaint for
3 Damages for Violation of Labor Code ¶ {sic} 2698 et seq., solely alleging claims under
4 PAGA; all individual and putative class claims were omitted, as were claims brought by
5 McElhannon, Syharath, Santiago, and Lantis. Thereafter, Iqbal and Milisci moved to
6 remand the matter to state court and CarMax filed a motion to strike the Second Amended
7 Complaint. On June 4, 2019, the *McElhannon* Lawsuit was ordered remanded back to state
8 court, and, on July 2, 2019, CarMax filed an Answer to Iqbal's and Milisci's Second
9 Amended Complaint for Damages in Alameda County. The Parties agreed to stipulate to
10 dismiss the *McElhannon* action without prejudice and toll the statute of limitations on any
11 claims asserted therein until the Third Amended Class Action Complaint is filed in the
12 *Weiss* lawsuit. The Court entered the dismissal order on or about March 11, 2020.

13 e) The Individual Arbitrations. In 2018, certain of Class Counsel began
14 serving CarMax with individual demands for arbitration on behalf of California Sales
15 Consultants. There were approximately 251 individual arbitration proceedings initiated by
16 Class Counsel Christina Humphrey and James Clark, with around 30 more later initiated by
17 Class Counsel Jacob Whitehead and Patrick McNicholas. Fifty-five (55) of the cases
18 initiated by Ms. Humphrey and Mr. Clark were later resolved in individual settlements. As
19 part of the global mediation discussions, the remaining arbitration claimants (other than the
20 55 individuals who resolved their claims on an individual basis) will be part of the Class, as
21 described herein, and given the opportunity to opt-out or be excluded from the settlement,
22 with Class Counsel agreeing to continue to represent them.

23 f) As alluded to above, the Parties have stipulated to toll the statute of
24 limitations for claims asserted in the *Gomez* and *McElhannon* lawsuits, the claims in the
25 *Gomez* and *McElhannon* lawsuits have been dismissed without prejudice, and the Parties
26 will consolidate the claims asserted in the *Gomez* and *McElhannon* lawsuits, along with
27 those asserted in the *Rowland* lawsuit, with the *Weiss* lawsuit through the filing of a Third
28 Amended Class Action Complaint, attached hereto as **Exhibit D**.

1 g) CarMax generally denies all of Plaintiffs' claims, including the allegations in
2 each of the pleadings filed in each of the lawsuits described above.

3 4. Mediation and Settlement Agreement Reached by the Parties. On April 29, 2019,
4 the Parties and their counsel participated in a formal mediation session in San Francisco, California
5 before Mr. Michael E. Dickstein, Esq. At the conclusion of the April 29, 2019 mediation session,
6 the Parties did not reach a resolution, but, through their counsel and with the assistance of Mr.
7 Dickstein, continued to discuss a potential settlement, and eventually reached an agreement to
8 resolve the Action on a class-wide basis pursuant to terms set forth in a Memorandum of
9 Understanding, which was fully executed by all Parties and their attorneys on or about December
10 2, 2019. This Stipulation formalizes the Settlement agreement reached by the Parties.

11 5. Investigation. The Parties have conducted a detailed and comprehensive
12 investigation of the claims asserted against CarMax and of the applicable law. The Parties engaged
13 in formal discovery in the *Weiss* Lawsuit and several of the individual arbitration proceedings, and
14 also engaged in informal discovery to prepare for mediation; the informal, pre-mediation discovery
15 included: (a) analysis by the Parties of certain records, data, and policies pertaining to Plaintiffs,
16 Class Members, and the claims asserted in the Action; (b) research of the law applicable to
17 Plaintiffs' claims and CarMax's affirmative defenses, as well as the damages alleged by Plaintiffs;
18 (c) exchange, examination, and analysis of information and documents relating to CarMax's formal
19 policies and Plaintiffs' claims for wage and hour violations; and (d) consideration of information
20 disclosed at and in connection with mediation.

21 6. Benefits of Settlement. The Class Representatives and Class Counsel recognize the
22 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
23 such litigation. The Class Representatives and Class Counsel also are aware of the burdens of
24 proof necessary to establish liability for the claims asserted in the Action, the defenses thereto, and
25 the difficulties inherent in the Action. Based on the foregoing, the Class Representatives and Class
26 Counsel have determined that the Settlement set forth in this Stipulation is a fair, adequate, and
27 reasonable settlement, and that it is in the best interest of the Class Members. Based on their
28 discovery and investigation, Class Counsel has determined that the Settlement is well within the

1 range of reasonableness. The settlement embodied and documented in this Stipulation is the
2 product of extensive, arms-length negotiations, and is not the product of collusion. Likewise,
3 CarMax has concluded that any further defense of this Action would be protracted and expensive.
4 Substantial amounts of time, energy, and resources have been, and will continue to be, devoted to
5 the defense of the Action unless this Settlement is made. Therefore, CarMax has agreed to settle,
6 in the manner and upon the terms set forth in this Stipulation, in order to fully and finally resolve
7 the claims asserted in the Action.

8 7. Denial of Wrongdoing. CarMax has denied and continues to deny each of the
9 claims asserted by Plaintiffs in this Action, as referenced in Paragraph 3 (and subsections thereof),
10 above, and which will be included in the Third Amended Class Action Complaint. CarMax has
11 asserted and continues to assert defenses to the Class Representatives' claims, and has expressly
12 denied and continues to deny any wrongdoing whatsoever. Neither this Stipulation nor any action
13 taken to carry out the Settlement may be construed as an admission by CarMax of any fault,
14 wrongdoing, or liability whatsoever.

15 **II. DATE OF SETTLEMENT**

16 8. Effective Date. The Settlement as to Class Members shall become effective when
17 the Class Settlement is considered "final." For purposes of this Stipulation:

18 a) If no timely appeals of the Court's order of final approval are filed, the
19 Settlement as to Class Members shall become "final" on the sixty-first (61st) date following
20 entry of the trial court's final Judgment *and* service of a valid Notice of Entry of Judgment;
21 or

22 b) In the event that a timely appeal of the court's order of final approval has
23 been filed, the Settlement as to Class Members shall become "final" when the applicable
24 appellate court has rendered a final decision or opinion affirming the trial court's final
25 approval without material modification, and the applicable date for seeking further
26 appellate review has passed, or the date that any such appeal has been either dismissed or
27 withdrawn by the appellant.
28

1 **III. CLASS MEMBERS INCLUDED IN SETTLEMENT**

2 9. Scope of the Class. There shall be two classes, the Arbitration Class and the Non-
3 Arbitration Class; together, the Arbitration Class and the Non-Arbitration Class comprise the
4 “Class”:

5 a) The Arbitration Class. The Arbitration Class is defined as follows: “All
6 persons who worked for CarMax Auto Superstores California, LLC and/or CarMax Auto
7 Superstores West Coast, Inc. in the State of California as a Sales Consultant and/or a Sales
8 Manager at any time during the Arbitration Class Period, and who have filed an individual
9 arbitration demand against CarMax Auto Superstores California, LLC and/or CarMax Auto
10 Superstores West Coast, Inc. that includes some or all of the claims alleged in the *Weiss*
11 Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit,” and
12 who are listed on the attached **Exhibit A.**”

13 b) The Non-Arbitration Class. The Non-Arbitration Class is defined as
14 follows: “All persons who worked for CarMax Auto Superstores California, LLC and/or
15 CarMax Auto Superstores West Coast, Inc. in the State of California as a Sales Consultant
16 and/or a Sales Manager at any time during the Non-Arbitration Class Period, who are not
17 listed on **Exhibit A**, and who have not already released, litigated, and/or arbitrated (in
18 whole or in part) any and all claims they may have possessed against CarMax Auto
19 Superstores California, LLC and/or CarMax Auto Superstores West Coast, Inc.”

20 10. Class Members’ Objections to This Settlement. Any Class Member may object to
21 the Settlement by filing a written objection with the Court and serving a Notice of Objection on
22 counsel for the Parties and/or the Settlement Administrator on or before the Document Receipt
23 Deadline, at the addresses detailed in Paragraph 45, below. Any Class Member who does not
24 object to the Settlement in the manner provided for in this Stipulation may not appeal the Final
25 Judgment. In the event that the Court approves this Settlement notwithstanding the objections of
26 any Class Members, Class Members who object to the Settlement will nonetheless be bound by the
27 Settlement. Class Members who have opted out of the Settlement as detailed in Paragraph 20,
28 subparagraph (d), herein do not have standing to object to the Settlement or to file an appeal as

described in Paragraph 8. The Parties, Class Counsel, and CarMax's Counsel agree not to take any action or make any statements to encourage any Class Members to object to the Settlement.

11. Class Members' Exclusion ("Opt-Out") From This Settlement. Any Class Member may request to be excluded ("opt-out") from this Settlement by mailing a written Request for Exclusion to the Settlement Administrator as prescribed in Paragraph 20, subparagraph (d), herein. Each Class Member who submits a valid Request for Exclusion shall not be bound by the Settlement. The Parties, Class Counsel, and CarMax's Counsel agree not to take any action or make any statements to encourage any Class Members to opt out of the Settlement.

12. Blow-Up Provisions. CarMax reserves the right to revoke this Stipulation and the Settlement provided for herein under either of the following circumstances:

a) If two percent (2%) or more of the Non-Arbitration Class Members opt out of the Settlement by submitting timely and valid Requests for Exclusion in the manner set forth in Paragraph 20, subparagraph (d), below, in which case, should CarMax elect to exercise its right to revoke this Stipulation, then this Stipulation will not have any force and/or effect; and/or

b) If ten (10) or more of the Arbitration Class Members opt out of the Settlement by submitting timely and valid Requests for Exclusion in the manner set forth in Paragraph 20, subparagraph (d), below, in which case, should CarMax elect to exercise its right to revoke this Stipulation, then this Stipulation will not have any force and/or effect.

Class Counsel and the Class Representatives agree not to oppose any application by CarMax and/or CarMax's Counsel that is consistent with this paragraph. CarMax shall make its election within seven (7) calendar days of receipt from the Settlement Administrator of the total percentage of opt-outs. If the Settlement is voided, no payment will be made by CarMax to Plaintiffs, any Class Member, or Class Counsel in connection with this Stipulation, and all Parties and third parties referenced in this Stipulation will bear their own costs, fees, and expenses associated with the Litigation. However, CarMax will be responsible for the costs incurred by the Settlement Administrator, and, under no circumstances will any claimants to whom payment has already been made by CarMax pursuant to an individual settlement agreement, be required to return any such

1 payments if CarMax elects to void the Settlement in the manner provided for herein. Should
2 CarMax exercise its right to void the Settlement pursuant to this Paragraph, nothing herein shall be
3 utilized or offered as proof or evidence of CarMax's waiver of its right to compel arbitration as to
4 any Class Member or any Class Representative.

5 13. Finality of Settlement. As of the Effective Date, the Settlement contained herein,
6 including the Release outlined below, shall be final and binding upon all Class Members who do
7 not exclude themselves from the Settlement.

8 **IV. RELEASES**

9 14. Release of Class Claims by Plaintiffs and Arbitration Class Members. As of the
10 date of preliminary approval of this Stipulation, Plaintiffs and Arbitration Class Members
11 (including the Class Representatives) release the Released Parties from the following, collectively
12 referred to as the "Arbitration Released Class Claims":

13 Any and all claims, actions, demands, causes of action, suits, debts, obligations,
14 damages, rights or liabilities that have been asserted by Plaintiffs and/or the
15 Arbitration Class Members or any of their respective heirs, executors,
16 administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents
17 and/or representatives arising out of any claims that were encompassed in the *Weiss*
18 Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon*
19 Lawsuit, and any claims which reasonably flow from the facts alleged in any of the
20 following:

- 21 • The Complaint for Civil Penalties Under the Private Attorneys General
22 Act of 2004 filed by Weiss (Sept. 4, 2015);
- 23 • The Class Action Complaint for Damages filed by the *Gomez* Plaintiffs
24 (June 29, 2016);
- 25 • The Complaint filed by Rowland (Sept. 7, 2016);
- 26 • The Representative Complaint for Damages filed by the *Gomez* Plaintiffs
27 (Nov. 1, 2016);
- 28 • The First Amended Class Action Complaint filed by Rowland (Feb. 1,
2017);
- The First Amended Complaint for Civil Penalties Under the Private
Attorneys General Act of 2004 filed by Weiss and Rowland (Feb. 21,
2017);

- The Second Amended Complaint for Civil Penalties Under the Private Attorneys General Act of 2004 filed by Weiss and Rowland (Aug. 14, 2017);
- The Class Action Complaint filed by McElhannon, Iqbal, Syharath, Santiago, and Milisci (Nov. 21, 2018);
- The First Amended Class Action Complaint filed by the *McElhannon* Plaintiffs (Jan. 31, 2019);
- The Second Amended Complaint for Damages for Violation of Labor Code ¶ *{sic}* 2698 et seq. (Private Attorneys General Action *{sic}* of 2004) filed by Iqbal and Milisci (Mar. 20, 2019); and
- The Third Amended Class Action Complaint filed by Plaintiffs Craig Weiss, James Rowland, Ryan Gomez, Jorge Iraheta, Parny Milien, Patrick Roe, Robert Schriener, Serge Shahinian, Joshua Tariff, Phillip Viener, Derek McElhannon, Aleena Iqbal, Christopher Syharath, Ruben Santiago, Emil Milisci, and Michael Lantis in connection with this Stipulation (**Exhibit D**),

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. Arbitration Released Class Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution,

1 interest, costs and fees, injunctive or equitable relief, and any other remedies
2 available at law or equity allegedly owed or available to the Arbitration Class
3 arising or reasonably flowing from any of the complaints in the *Weiss* Lawsuit, the
4 *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, as
5 identified above, against the Released Parties for the time period from September 4,
6 2012 up to the date on which this Stipulation has been executed by all Parties.

7 The *res judicata* effect of the Judgment will be the same as that of the Release.

8 15. Release of Class Claims by the Non-Arbitration Class Members. As of the date of
9 preliminary approval of this Stipulation, Non-Arbitration Class Members release the Released
10 Parties from the following, collectively referred to as the “Non-Arbitration Released Class
11 Claims”:

12 Any and all claims, actions, demands, causes of action, suits, debts, obligations,
13 damages, rights or liabilities that have been asserted by Plaintiffs and/or the Non-
14 Arbitration Class Members or any of their respective heirs, executors,
15 administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents
16 and/or representatives arising out of any claims that were encompassed in the *Weiss*
17 Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon*
18 Lawsuit, and any claims which reasonably flow from the facts alleged in any of the
19 following:

- 20 • The Complaint for Civil Penalties Under the Private Attorneys General
21 Act of 2004 filed by Weiss (Sept. 4, 2015);
- 22 • The Class Action Complaint for Damages filed by the *Gomez* Plaintiffs
23 (June 29, 2016);
- 24 • The Complaint filed by Rowland (Sept. 7, 2016);
- 25 • The Representative Complaint for Damages filed by the *Gomez* Plaintiffs
26 (Nov. 1, 2016);
- 27 • The First Amended Class Action Complaint filed by Rowland (Feb. 1,
28 2017);
- The First Amended Complaint for Civil Penalties Under the Private
Attorneys General Act of 2004 filed by Weiss and Rowland (Feb. 21,
2017);

- The Second Amended Complaint for Civil Penalties Under the Private Attorneys General Act of 2004 filed by Weiss and Rowland (Aug. 14, 2017);
- The Class Action Complaint filed by McElhannon, Iqbal, Syharath, Santiago, and Milisci (Nov. 21, 2018);
- The First Amended Class Action Complaint filed by the *McElhannon* Plaintiffs (Jan. 31, 2019);
- The Second Amended Complaint for Damages for Violation of Labor Code ¶ *{sic}* 2698 et seq. (Private Attorneys General Action *{sic}* of 2004) filed by Iqbal and Milisci (Mar. 20, 2019); and
- The Third Amended Class Action Complaint filed by Plaintiffs 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 in connection with this Stipulation (**Exhibit D**),

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. Non-Arbitration Released Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs

1 and fees, injunctive or equitable relief, and any other remedies available at law or
2 equity allegedly owed or available to the Non-Arbitration Class arising or
3 reasonably flowing from any of the complaints in the *Weiss* Lawsuit, the *Gomez*
4 Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, as identified
5 above, against the Released Parties for the time period from September 4, 2014 up
6 to the date on which this Stipulation has been executed by all Parties.

7 The *res judicata* effect of the Judgment will be the same as that of the Release.

8 16. General Release by the Class Representatives. In addition to the releases set forth in
9 the above Paragraph 14, the Class Representatives make the additional general release of all of
10 their individual claims as follows: The Class Representatives release the Released Parties from any
11 and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights, or
12 liabilities of any nature and description whatsoever, known or unknown, that any of the Class
13 Representatives individually may possess against the Released Parties arising from any Class
14 Representative's respective employment with CarMax. The Class Representatives hereby
15 acknowledge that, upon receiving the sums provided to them pursuant to this Stipulation, they will
16 have received all potential wages, damages, and penalties owing to them by CarMax, and, further,
17 that they are not owed any additional wages, penalties, or damages from CarMax. This general
18 release does not purport to release any claims not allowed by law, including workers'
19 compensation claims.

20 The Class Representatives also agree to expressly and fully waive the provisions of
21 California Civil Code section 1542, which provides as follows:

22 **A general release does not extend to claims that the creditor or releasing party**
23 **does not know or suspect to exist in his or her favor at the time of executing**
24 **the release and that, if known by him or her, would have materially affected**
25 **his or her settlement with the debtor or released party.**

26 Each Class Representative's general release shall cover the time period from September 4, 2012 up
27 to the Effective Date.

V. **AMOUNT AND DISTRIBUTION OF SETTLEMENT**

17. **Settlement Amount.** The Total Class Action Settlement Amount shall be Six Million Five Hundred Eighteen Thousand Dollars (\$6,518,000.00). CarMax will pay the Total Class Action Settlement Amount by wiring that amount to the Settlement Administrator within fifteen (15) calendar days following the Effective Date, as defined in Paragraph 8, above. Under no circumstances will CarMax be obligated to pay more than the amount of \$6,518,000.00 as a result of this Settlement, inclusive of the employer's share of payroll withholdings, as described in Paragraph 18, subparagraph (g), of this Stipulation.

18. **Deductions From Settlement Amount.** Deductions from the Total Class Action Settlement Amount, all subject to Court approval, shall be made for:

a) **Attorneys' Fees.** Class Counsel may apply for an award of attorneys' fees, not to exceed thirty five percent (35%) of the Total Class Action Settlement Amount, Two Million Two Hundred Eighty-One Thousand Three Hundred Dollars (\$2,281,300.00). The attorneys' fees award shall be paid from the Total Class Action Settlement Amount. The amount of attorneys' fees shall include all past and future attorneys' fees to Class Counsel as it pertains to this Settlement – including, without limitation, all time expended by Class Counsel in defending the Settlement and securing final approval of the Settlement (including any appeals thereof). Such fees shall include any and all fees incurred by Class Counsel in connection with the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, the *McElhannon* Lawsuit, and any individual arbitration proceeding against CarMax by the Arbitration Class Members or any other party represented by Class Counsel prior to the Effective Date in claims brought against CarMax, with the exception of any Arbitration Class Members who may timely opt out of this Settlement. The Parties expressly agree that Class Counsel will not be entitled to recover, and shall not seek to recover, any additional attorneys' fees in connection with any individual arbitration proceeding against CarMax by the Arbitration Class Members except those who may timely opt out of this Settlement, CarMax agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiffs recovering that or any particular

1 amount as an attorneys' fees award. Even in the event that the Court reduces or does not
2 approve the requested attorneys' fees award, the unapproved amount will be deposited into
3 the Net Settlement Amount for distribution to Class Members, and Plaintiffs and Class
4 Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will
5 remain binding.

6 b) Attorneys' Costs. In addition to attorneys' fees, Class Counsel may apply
7 for an award of costs, not to exceed the sum of One Hundred Fifty Thousand Dollars
8 (\$150,000.00). The costs award shall be paid from the Total Class Action Settlement
9 Amount. The amount of costs shall include all past and future costs associated with this
10 Action – including, without limitation, all costs expended by Class Counsel in defending
11 the Settlement and securing final approval of the Settlement (including any appeals
12 thereof). Such costs shall include any and all costs incurred by Class Counsel in connection
13 with the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, the *McElhannon*
14 Lawsuit, and any individual arbitration proceeding against CarMax by the Arbitration Class
15 Members or any other party represented by Class Counsel prior to the Effective Date in
16 claims brought against CarMax, with the exception of any Arbitration Class Members who
17 may timely opt out of this Settlement. The Parties expressly agree that Class Counsel will
18 not be entitled to recover, and shall not seek to recover, any additional costs in connection
19 with any individual arbitration proceeding against CarMax by the Arbitration Class
20 Members, with the exception of any Arbitration Class Members who may timely opt out of
21 this Settlement. CarMax agrees not to oppose any such application which is consistent with
22 this paragraph; however, the Settlement is not contingent on Plaintiffs recovering that or
23 any particular amount as an attorneys' costs award. Even in the event that the Court
24 reduces or does not approve the requested attorneys' costs award, the unapproved amount
25 will be deposited into the Net Settlement Amount for distribution to all Class Members, and
26 Plaintiffs and Class Counsel shall not have the right to revoke this Stipulation or this
27 Settlement, and it will remain binding.

28 c) Class Representatives' Enhancement Awards. Class Counsel may apply for

enhancement awards to the Class Representatives as follows:

- An enhancement payment to plaintiff Craig Weiss in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00);
- An enhancement payment to plaintiff James Rowland in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00);
- An enhancement payment to plaintiff Ryan Gomez in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Jorge Iraheta in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Parny Milien in an amount not to exceed \$5,000.00;
- An enhancement payment to plaintiff Patrick Roe in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Robert Schrinier in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Serge Shahinian in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Joshua Tariff in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Phillip Viener in an amount not to exceed Five Thousand Dollars (\$5,000.00);
- An enhancement payment to plaintiff Derek McElhannon in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- An enhancement payment to plaintiff Aleena Iqbal in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- An enhancement payment to plaintiff Emil Milisci in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
- An enhancement payment to plaintiff Christopher Syharath in an amount not

to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);

- An enhancement payment to plaintiff Ruben Santiago in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00); and
- An enhancement payment to plaintiff Michael Lantis in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00).

These enhancement awards shall be paid from the Total Class Action Settlement Amount. CarMax agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiffs, or any of them, recovering those or any particular amount as enhancement payments. Even in the event that the Court reduces or does not approve any of the requested enhancement payments, the unapproved amounts will be deposited into the Net Settlement Amount for distribution to all Class Members, and Plaintiffs and Class Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding.

d) Arbitration Class Member Enhancement Awards. Class Counsel may apply for enhancement awards for the Arbitration Class Members in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for each Arbitration Class Member listed on **Exhibit A** who does not submit a timely Request for Exclusion, other than the Class Representatives who are already receiving an enhancement award, as described in Paragraph 18, subparagraph (c), above. These Arbitration Class Member enhancement awards shall be paid from the Total Class Action Settlement Amount. CarMax agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on the Arbitration Class Members, or any of them, recovering those or any particular amount as enhancement payments. Even in the event that the Court reduces or does not approve any of the requested enhancement payments, the unapproved amounts will be deposited into the Net Settlement Amount for distribution to all Class Members, and Plaintiffs and Class Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding.

e) Settlement Administration Costs and Fees. All actual costs for settlement

1 administration, including related accounting costs, shall be paid from the Total Class Action
2 Settlement Amount. The Parties contemplate that the Settlement Administrator shall be
3 CPT Group, or any other third-party class action settlement administrator agreed to by the
4 Parties and approved by the Court for the purposes of administering this Settlement. In
5 connection with this Settlement, Class Counsel has obtained an estimate of the costs of
6 administration of this matter from CPT Group, which amount is estimated to be Thirty-One
7 Thousand Dollars (\$31,000.00.00). Even if actual costs for settlement administration in this
8 Action exceed \$31,000.00, all such amounts will be deducted and paid from the Total Class
9 Action Settlement Amount. To the extent actual costs for settlement administration are less
10 than \$31,000.00 or any amount is not approved by the Court, such amounts will be
11 deposited into the Net Settlement Amount for distribution to all Class Members. CarMax
12 agrees not to oppose any such applications which are consistent with this paragraph.

13 f) PAGA Allocation. The Parties agree to allocate Three Hundred Thousand
14 Dollars (\$300,000.00) of the Total Class Action Settlement Amount to resolve the Class
15 Members' claims arising under PAGA. Pursuant to PAGA, 75 percent of the PAGA
16 Allocation, or Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), shall be paid to
17 the State of California Labor and Workforce Development Agency (the "LWDA"), with the
18 remaining 25 percent, or Seventy-Five Thousand Dollars (\$75,000.00), allocated to the Net
19 Settlement Amount. To the extent that the Court approves an amount less than
20 \$300,000.00, any unapproved amount will be deposited into the Net Settlement Amount for
21 distribution to all Class Members.

22 g) Employer's Share of Applicable Federal and State Withholding Taxes. The
23 amount calculated as the employer's share of the applicable federal and state withholding
24 taxes based on the amounts paid as Individual Settlement Awards to Class Members is
25 intended to be paid from, and not in addition to, the Total Class Action Settlement Amount.
26 Specifically, the portion of each Individual Settlement Award designated as the employer's
27 share of taxes will be deducted from the amount of the Individual Settlement Award prior
28 to final distribution.

1 h) Payment of Individual Settlement Awards to Class Members. After the
2 amounts described in Paragraph 18, subparagraphs (a) through (g), above, have been
3 deducted from the Total Class Action Settlement Amount, the remainder – the Net
4 Settlement Amount – shall be distributed to each Class Member, in the following manner:

5 The Net Settlement Amount shall be divided by the number of aggregate qualified
6 weeks worked by all Class Members during the Arbitration Class Period or Non-
7 Arbitration Class Period, as applicable, to produce a “Weekly Settlement Value.”
8 For Arbitration Class Members, a “qualified week” shall be a week worked by an
9 Arbitration Class Member in California during the Arbitration Class Period. For
10 Non-Arbitration Class Members, a “qualified week” shall be a week worked by a
11 Non-Arbitration Class Member in California during the Non-Arbitration Class
12 Period as a Sales Consultant or a Sales Manager. Each Arbitration Class Member
13 shall be eligible to receive a settlement payment in the amount of the total number
14 of qualified weeks the Arbitration Class Member worked for CarMax in California
15 during the Arbitration Class Period multiplied by the Weekly Settlement Value, less
16 applicable withholdings, provided that the Arbitration Class Member has not
17 submitted a Request for Exclusion. Each Non-Arbitration Class Member shall be
18 eligible to receive a settlement payment in the amount of the total number of
19 qualified weeks the Non-Arbitration Class Member worked for CarMax in
20 California during the Non-Arbitration Class Period multiplied by the Weekly
21 Settlement Value, less applicable withholdings, provided that the Non-Arbitration
22 Class Member has not submitted a Request for Exclusion.

23 19. Non-Reversionary Settlement. There will be no reversion to CarMax following the
24 settlement process. In the event that an Individual Settlement Award is paid to a Class Member by
25 check and the check is not cashed on or before the Check Cashing Deadline, the amount of the
26 Individual Settlement Award shall be considered unclaimed. Each unclaimed Individual
27 Settlement Award paid to a Class Member but not cashed on or before the Check Cashing Deadline
28 shall be tendered to the State of California Unclaimed Property Fund in the Class Member’s name.

1 **VI. SETTLEMENT ADMINISTRATION**

2 20. Settlement Administrator's Duties. The Settlement Administrator shall be
3 responsible for (a) processing the data provided by CarMax to be used in calculating Individual
4 Settlement Awards; (b) preparing, printing, and mailing to Class Members the Notice (attached
5 hereto as **Exhibits B and C**), as well as following up with reasonable skip tracing; (c) providing
6 weekly status reports to Class Counsel and CarMax's Counsel, including: (1) the number of Notice
7 Packets mailed, (2) the number of Notices of Objection received, and (3) the number of Requests
8 for Exclusion received; (d) calculating and mailing Individual Settlement Awards to Class
9 Members; (e) calculating and paying the employer's share of the applicable federal and state
10 withholding taxes; (f) filing any required federal and state tax forms and related agency reporting;
11 (g) consulting with Class Counsel and CarMax's Counsel concerning any relevant issue, including
12 (without limitation) the estimated amounts of approximate Individual Settlement Awards; and
13 (h) any and all such other tasks as to which the Parties mutually agree, or which the Court orders
14 the Settlement Administrator to perform. The settlement process shall be anonymous to the extent
15 possible.

16 CarMax and CarMax's Counsel shall have no responsibility for validating or ensuring the
17 accuracy of the Settlement Administrator's work, and shall not be bound by any contract or
18 agreement entered into between the Settlement Administrator and Class Counsel, if any. In
19 addition, CarMax and CarMax's Counsel shall not bear any responsibility any for errors or
20 omissions by the Settlement Administrator in administering the Settlement. Without prejudice to
21 any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its
22 obligations (whether committed by the Settlement Administrator or its agents) and to indemnify
23 and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of
24 action, costs, and expenses (including legal fees and expenses) arising out of any breach committed
25 by the Settlement Administrator or its agents.

26 Specifically, the Settlement Administrator shall perform the following duties:

27 a) Processing of Data Provided by CarMax Regarding Class Members. Upon
28 receipt of the data provided by CarMax pursuant to Paragraph 25 herein, the Settlement

1 Administrator shall determine, for each Class Member: (i) the Class Member's name, (ii)
2 the Class Member's last known address, (iii) the last four digits of the Class Member's
3 social security number, and (iv) the Weekly Settlement Value to be paid to the Class
4 Member pursuant to Paragraph 18, subparagraph (h), above.

5 b) Mailing of Documents. Within fourteen (14) calendar days of receipt of the
6 database containing the information to be provided by CarMax pursuant to Paragraph 25
7 herein, the Settlement Administrator shall mail a copy of the Notice to all Class Members
8 by first class regular U.S. Mail, using the most current mailing address information
9 provided by CarMax and/or obtained by the Settlement Administrator. The Settlement
10 Administrator will engage in address searches consistent with its normal practices in
11 administering settlements of wage claims, including skip tracing. Such search efforts shall
12 include, where necessary, using social security numbers to obtain better address
13 information and attempting to call such Class Members. Any returned envelopes from this
14 mailing with forwarding addresses will be utilized by the Settlement Administrator to
15 forward the Notices to the Class Members.

16 c) Re-Mailing of Returned Notices. Notices returned to the Settlement
17 Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the
18 returned envelope. A returned Notice will be forwarded only once per Class Member by
19 the Settlement Administrator. Upon completion of these steps by the Settlement
20 Administrator, the Parties shall be deemed to have satisfied their obligation to provide the
21 Notice to the affected Class Member. The affected Class Member shall remain a Class
22 Member and shall be bound by all the terms of this Stipulation and the Court's Final Order
23 and Judgment.

24 d) Processing Requests for Exclusion ("Opt-Outs") From Settlement. In the
25 event that a Class Member requests to be excluded ("opts out") from the Settlement
26 provided herein, he or she must mail a written Request for Exclusion to the Settlement
27 Administrator by first class U.S. Mail, or equivalent, postage paid and postmarked, by no
28 later than the Document Receipt Deadline, which is thirty (30) calendar days after the date

1 that the Settlement Administrator originally mails Notices to Class Members. To be valid,
2 the written Request for Exclusion must include (i) the Class Member's name, (ii) the Class
3 Member's address, (iii) a request for exclusion, and (iv) the Class Member's signature. The
4 Settlement Administrator shall notify Class Counsel and CarMax's Counsel of its receipt of
5 all valid Requests for Exclusion within three (3) business days after having received each
6 such Request for Exclusion.

7 e) Payment of Individual Settlement Awards. The Settlement Administrator
8 shall be solely responsible for the disbursement of the Individual Settlement Award
9 payments.

10 f) Declaration of Due Diligence. No later than ten (10) calendar days prior to
11 the Final Settlement Approval Hearing, the Settlement Administrator shall provide both
12 Parties with a declaration of due diligence to be filed with the Court.

13 g) Allocating Portions of the Individual Settlement Awards as Wages. The
14 Settlement Administrator shall be responsible for calculating the portion of each Individual
15 Settlement Award to be allocated as wages. Thirty-three percent (33%) of each Individual
16 Settlement Award shall be allocated as wages, and sixty-seven percent (67%) of each
17 Individual Settlement Award shall be allocated as interest and penalties.

18 h) Taxation of Individual Settlement Awards. The Settlement Administrator
19 shall be responsible for paying the employer's and employees' share of federal, state, and
20 local payroll and income taxes. The portion of each Individual Settlement Award allocated
21 as wages shall be subject to payroll withholding. The employer's share of payroll taxes
22 shall be deducted from, and not in addition to, the Total Class Action Settlement Amount,
23 as further described in Paragraph 18, subparagraph (g), above. Appropriate withholding of
24 the employee's share of income taxes shall be deducted from each Individual Settlement
25 Award.

26 i. Federal Tax Reporting. The Settlement Administrator shall issue an IRS
27 Form W-2 to each Class Member for the portion of the Individual
28 Settlement Award that is designated as wages. The Settlement

1 Administrator shall issue an IRS Form 1099 to each Class Member for
2 the portion of the Individual Settlement Awards that is not designated as
3 wages. The Settlement Administrator shall issue an IRS Form 1099 to
4 the Class Representatives and Arbitration Class Members for any
5 enhancement awards paid pursuant to Paragraph 18, subparagraphs (c) or
6 (d), above, in connection with their roles in this Action.

7 ii. State Tax Reporting. The Settlement Administrator shall file with any
8 and all relevant California state agencies all required reports related to
9 the Individual Settlement Awards. For purposes of this reporting, prior
10 to the Settlement Administrator's disbursement of the Individual
11 Settlement Awards, CarMax shall provide to the Settlement
12 Administrator its Form DE 2088, *Notice of Contribution Rates and*
13 *Statement of UI Account*, for the current calendar year, or, if unavailable,
14 CarMax may provide instead their California State Employer's
15 Identification Number and applicable UI and ETT Rates.

16 iii. Responsibility for Tax Obligations. All Class Members and the Class
17 Representatives will be responsible for correctly characterizing the
18 compensation they receive for tax purposes and for paying any taxes on
19 the amounts received, except for the employer contributions which will
20 be handled as provided by this Stipulation. The Class Members and the
21 Class Representatives agree to indemnify CarMax and Class Counsel for
22 any liability CarMax incurs to any tax authority on account of the Class
23 Members' or the Class Representatives' failures to pay all taxes due on
24 amounts they receive hereunder, except if the failure results from
25 CarMax's failure to pay its own portion of taxes due. The liability of
26 each Class Member and each Class Representative is limited to the
27 liability caused by that individual's own failure.

28 iv. Circular 230 Disclaimer. Each Party to this Agreement including the

1 Class Members (for purposes of this section, the “acknowledging party”
2 and each Party to this Agreement other than the acknowledging party, an
3 “other party”) acknowledges and agrees that: (1) no provision of this
4 Agreement, and no written communication or disclosure between or
5 among the Parties or their attorneys and other advisers, is or was
6 intended to be, nor shall any such communication or disclosure
7 constitute or be construed or be relied upon as, tax advice within the
8 meaning of United States Treasury Department circular 230 (31 CFR
9 part 10, as amended); (2) the acknowledging party (a) has relied
10 exclusively upon his, her or its own, independent legal and tax counsel
11 for advice (including tax advice) in connection with this Agreement, (b)
12 has not entered into this Agreement based upon the recommendation of
13 any other Party or any attorney or advisor to any other Party, and (c) is
14 not entitled to rely upon any communication or disclosure by any
15 attorney or adviser to any other party to avoid any tax penalty that may
16 be imposed on the acknowledging party; and (3) no attorney or adviser to
17 any other Party has imposed any limitation that protects the
18 confidentiality of any such attorney’s or adviser’s tax strategies
19 (regardless of whether such limitation is legally binding) upon disclosure
20 by the acknowledging party of the tax treatment or tax structure of any
21 transaction, including any transaction contemplated by this Agreement.

22 i) Mailing of Individual Settlement Awards. Within fifteen (15) calendar days
23 after CarMax’s transfer of funds to the Settlement Administrator, the Settlement
24 Administrator shall mail all Class Members their Individual Settlement Awards. Each
25 check issued to a Class Member shall remain valid and negotiable for one hundred eighty
26 (180) days from the date of issuance. Those Individual Settlement Awards not cashed by
27 the Check Cashing Deadline shall be canceled automatically, in which event the Class
28 Member’s claim will be deemed void and the unclaimed funds shall be sent to the State of

California Unclaimed Property Fund in the Class Member's name.

j) Certifying the Class Members Bound by the Settlement. Within fifty (50) calendar days from the Effective Date, the Settlement Administrator shall file written certification with the Court with copies to counsel for all Parties that all Class Members have been mailed their Individual Settlement Awards.

k) Payments to Class Counsel. Within fifteen (15) calendar days after CarMax's transfer of funds to the Settlement Administrator, the Settlement Administrator shall pay the attorneys' fees and costs, as detailed in Paragraph 18, subparagraphs (a) and (b), above.

l) Payment of PAGA Allocation. Within fifteen (15) calendar days after CarMax's transfer of funds to the Settlement Administrator, the Settlement Administrator shall mail to the LWDA the State of California's allocated portion of the Court-approved PAGA Allocation, as detailed in Paragraph 18, subparagraph (e), above.

21. Disputes Regarding the Settlement Administrator's Performance of Duties. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Stipulation until all payments and obligations contemplated by this Stipulation have been fully carried out.

VII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

22. Submission of Stipulation to Court. Plaintiffs and/or Class Counsel shall promptly submit this Stipulation to the Court in support of Plaintiffs' motion for preliminary approval and determination by the Court as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to the Court for the entry of an order substantially in the following form:

a) Scheduling a fairness hearing on the question of whether the proposed Settlement – including payment of attorneys' fees, attorneys' costs, approval of the PAGA Allocation, appointment of the Class Representatives and the amounts of their enhancement awards, and the method of determining Individual Settlement Awards to be paid to Class Members – should be finally approved as fair, reasonable, and adequate as to the Class;

b) Approving as to form and content the proposed Notice (attached as **Exhibits B and C**);

c) Directing the mailing to Class Members of the Notice, by first class U.S. Mail, pursuant to the terms specified herein;

d) Preliminarily approving the Settlement, subject only to the objections of Class Members and final review by the Court;

e) Approval of the proposed Third Amended Class Action Complaint, attached hereto as **Exhibit D**, adding all of the Class Representatives as class representatives, and adding Class claims against CarMax based on the same factual and legal allegations underlying the *Weiss* Lawsuit, the *Gomez* Lawsuit, the *Rowland* Lawsuit, and/or the *McElhannon* Lawsuit, including, but not limited to, Class claims for 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, and deeming it filed as of the date of Preliminary Approval of the Settlement; and

f) Enjoining the Class Representatives and all Class Members from filing or prosecuting any claims, suits, arbitrations, or administrative proceedings (including filing claims with the California Division of Labor Standards Enforcement) regarding claims released by the Settlement unless such individuals have submitted valid Requests for Exclusion to the Settlement Administrator.

Class Counsel must submit the motion for preliminary approval and all supporting documents to CarMax's Counsel, for CarMax's review and comment, no later than five (5) business days prior to filing.

23. Amendment of This Stipulation to Conform to the Court's Order. To the extent the Court does not approve this Stipulation, or any term contained herein, and instead allows the Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the

1 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation
2 that the Court approves.

3 **VIII. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

4 24. Timely Approval of Documents to be Mailed by the Settlement Administrator.
5 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all
6 claims administration documents, including the Notice to be mailed to the Class, within four (4)
7 business days of the Settlement Administrator's request for approval.

8 25. CarMax's Provision of Class Member Data to Settlement Administrator. No later
9 than thirty (30) calendar days following preliminary approval of this Settlement by the Court,
10 CarMax shall provide the Settlement Administrator with data that is within CarMax's possession
11 containing, for each Class Member: (a) the Class Member's name; (b) the Class Member's last
12 known address; (c) the Class Member's social security number; (d) whether the individual is an
13 Arbitration Class Member or a Non-Arbitration Class Member; (e) the total number of "qualified
14 weeks" during which each Arbitration Class Member worked for CarMax in California during the
15 Arbitration Class Period; and (f) the total number of "qualified weeks" during which each Non-
16 Arbitration Class Member worked for CarMax in California during the Non-Arbitration Class
17 Period as a Sales Consultant or a Sales Manager. This Class information is confidential and is not
18 to be disclosed to anyone other than the Settlement Administrator. This information shall be based
19 on CarMax's payroll and other business records, and shall be in a format readily accessible to
20 CarMax. Within fourteen (14) calendar days of receipt of the information from CarMax, the
21 Settlement Administrator will mail the Notice to the Class Members, provided that counsel for the
22 Parties have approved the documents pursuant to Paragraph 24. In the event that approval of the
23 documents pursuant to Paragraph 24 takes more than fourteen (14) calendar days, the Settlement
24 Administrator shall mail the Notice to the Class Members within one (1) business day of receiving
25 approval of the documents pursuant to Paragraph 24.

26 26. Disputes Arising from Settlement Administration. Any disputes arising during the
27 settlement administration process must be resolved informally by counsel for the Parties and, if the
28 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the

Document Receipt Deadline.

27. Motions by Class Counsel.

a) Motions Required for Final Approval of the Settlement. Class Counsel shall timely prepare, subject to CarMax's review and right to comment, Final Settlement Papers in conformance with the terms of this Settlement, including (1) a motion for final approval of the Settlement; (2) a motion for award of attorneys' fees and costs; (3) a motion for the Class Representatives' and Arbitration Class Members' enhancement awards; (4) the [Proposed] Final Settlement Order; and (5) any other documents, petitions, or motions required to effectuate this Settlement – including, but not limited to, any additional proposed orders requested by the Court. Class Counsel must submit the Final Settlement Papers to CarMax's Counsel, for CarMax's review and comment, no later than five (5) business days prior to filing the motion for final approval of the Settlement. In the event that Class Counsel and CarMax's Counsel cannot resolve any dispute regarding the Final Settlement Papers arising from CarMax's right to review and comment, CarMax's Counsel shall submit its objections to the Final Settlement Papers to the Court before or during the Final Settlement Approval Hearing.

b) [Proposed] Final Settlement Order. The [Proposed] Final Settlement Order shall include a proposed Final Order and Judgment ordering:

- i. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- ii. Approval of Class Counsel's application for an award of attorneys' fees and costs (Class Counsel will separately submit a motion for award of attorneys' fees and costs);
- iii. Approval of the enhancement awards to the Class Representatives;
- iv. Dismissal of the Action with prejudice and permanently barring and enjoining the Class Representatives and all Class Members from prosecuting against the Released Parties any claims released herein pursuant to

Paragraphs 14 through 16, above, upon satisfaction of all payments and obligations hereunder; and

- v. Reserving jurisdiction over the construction, interpretation, implementation, and enforcement of the Parties' Settlement, and over the administration and distribution of the Settlement amounts.

28. Final Fairness Hearing. Following expiration of the Document Receipt Deadline, the Parties shall attend a Final Settlement Approval Hearing with the Court to finally approve the Settlement as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs to Class Counsel; (c) the enhancement awards to the Class Representatives and the Arbitration Class Members; (d) the costs and fees for settlement administration; (e) the PAGA Allocation; and (f) the Individual Settlement Awards to be paid to the Class Members, including the methodology used to calculate such awards.

IX. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

29. Final Settlement Approval, and Entry of Judgment. At or before the Final Settlement Approval Hearing, Class Counsel shall submit a [Proposed] Final Settlement Approval Order and Judgment to the Court for the Court's approval and entry. After entry of the Final Settlement Approval Order and Judgment, the Court shall have continuing jurisdiction over the administration of the Settlement.

30. Dismissal of Individual Arbitration Claims. Within ten (10) calendar days following entry of the Final Settlement Approval Order and Judgment, each Arbitration Class Member (as listed on the attached **Exhibit A**) who does not submit a timely Request for Exclusion, and/or Class Counsel, must contact the applicable arbitrator and/or arbitration provider (*i.e.*, the American Arbitration Association or National Arbitration and Mediation) to provide notification that each such Arbitration Class Member is dismissing his or her claims against CarMax with prejudice.

31. Payment of Settlement Amount. Not later than fifteen (15) calendar days following the Effective Date, CarMax shall deposit the Total Class Action Settlement Amount, into an account established by the Settlement Administrator. The Settlement Administrator will retain

1 authority over the deposited funds, which are to be used in accordance with this Stipulation and
2 any orders of the Court. The Settlement Administrator shall make all payments and other
3 disbursements required by this Stipulation from the Total Class Action Settlement Amount.
4 CarMax shall have no further obligations over the distribution of the Total Class Action Settlement
5 Amount.

6 32. Provision of Final Settlement Approval Order and Judgment to Settlement
7 Administrator. Within two (2) business days of final approval by the Court of the Settlement
8 provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a
9 copy of the Final Settlement Approval Order and Judgment.

10 33. Provision of Wiring Instructions to CarMax. Within the later of (a) three (3)
11 business days after receiving a copy of the Final Settlement Approval Order and Judgment, or (b)
12 three (3) business days after the Effective Date, the Settlement Administrator shall notify CarMax's
13 Counsel of the wiring instructions for funding the Total Class Action Settlement Amount as
14 approved by the Court.

15 **X. ADDITIONAL TERMS**

16 34. Nullification of Settlement. This Stipulation shall be null and void, and any order of
17 judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if
18 any of the following occurs:

- 19 a) The Court does not enter the Final Settlement Approval Order and Judgment
20 as provided for herein or contemplated by this Stipulation;
- 21 b) The Court does not finally approve the Settlement as provided for herein;
- 22 c) The Court does not enter a Final Settlement Approval Order and Judgment
23 as provided for herein that becomes final as a result of the occurrence of the Effective Date;
24 or
- 25 d) The Settlement does not become final for any other reason.

26 In such a case, the Parties shall be returned to their respective statuses as of the date of April 29,
27 2019, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an
28 appeal is filed from the Court's Final Settlement Approval Order and Judgment prior to the

Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

35. No Admissions. Nothing contained herein is to be construed or deemed to be an admission of liability or wrongdoing by CarMax. This Stipulation and the attached exhibits are settlement documents, and, pursuant to California Evidence Code section 1152, these documents shall be inadmissible in any proceeding except in an action or proceeding to approve, interpret, or enforce this Stipulation.

36. Amendment or Modification. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties.

37. Entire Agreement. This Stipulation and the accompanying exhibits constitute and comprise the entire agreement between the Parties. No oral or written representations, warranties, or inducements have been made to any of the Parties concerning this Stipulation other than the representations, warranties, and covenants contained and memorialized herein.

38. Construction. The Parties agree that the terms of this Stipulation and the accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation shall not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties or their respective counsel participated in the drafting of this Stipulation.

39. Parties' Authority. The signatories to this Stipulation represent that they are fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions hereof.

40. Successors and Assigns. This Stipulation is binding upon, and inures to the benefit of, the Parties' successors and assigns. The Parties represent and warrant that they have not, directly or indirectly, assigned, transferred, or encumbered to any person or entity any portion of any claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

41. Enforcement of Actions. In the event that any of the Parties to this Stipulation institutes any legal action, arbitration, or other proceeding against any of the other Parties to enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation,

1 the successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable
2 attorneys' fees and costs, including expert witness fees, incurred in connection with any such
3 enforcement proceedings.

4 42. Governing Law. All terms of this Stipulation shall be governed by and interpreted
5 according to the laws of the State of California.

6 43. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
7 interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and
8 judgments entered in connection therewith.

9 44. Counterparts. This Stipulation may be executed in one or more counterparts. All
10 executed counterparts, and each of them, shall be deemed to be one and the same instrument.
11 Signatures may be affixed either by original signatures, PDF, or facsimile.

12 45. Notices. Unless otherwise specifically provided in this Stipulation, all notices,
13 demands, and/or other communications will be in writing and will be deemed to have been duly
14 given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

15 To Plaintiffs & The Class:

16 Christina A. Humphrey
17 CHRISTINA HUMPHREY LAW, P.C.
18 8330 Allison Avenue, Suite C
19 La Mesa, California 91942

20 To CarMax:

21 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
22 Jack S. Sholkoff
23 Jennifer L. Katz
24 400 South Hope Street, Suite 1200
25 Los Angeles, California 90071

26 46. Enforceability. The Parties intend for this Agreement to be enforceable in the
27 Superior Court of California for the County of Placer, by and subject to the Court's pending
28 jurisdiction.

47. Interpretation. This Stipulation shall be construed as a whole according to its fair
meaning. It shall not be construed strictly for or against any Party. Unless the context indicates
otherwise, the term "or" shall be deemed to include the term "and," and the singular or plural
number shall be deemed to include the other. Captions and headings are intended solely for

1 convenience of reference and shall not be used in the interpretation of this Stipulation.

2 48. Non-Publicity. Plaintiffs and Class Counsel agree not to disclose or publicize the
3 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations
4 underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity,
5 except to potential Class Members and as shall be contractually required to effectuate the terms of
6 the Settlement. For the avoidance of doubt, this paragraph means Plaintiffs and Class Counsel
7 agree not to issue press releases; communicate with, or respond to, any media or publication
8 entities; publish information in manner or form, whether printed or electronic, on any medium; or
9 otherwise communicate, whether by print, video, recording, or any other medium, with any person
10 or entity concerning the Settlement, including the fact of the Settlement, its terms or contents, and
11 the negotiations underlying the Settlement, except as shall be contractually required to effectuate
12 the terms of the Settlement. However, for the limited purpose of allowing Class Counsel to prove
13 adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in
14 this action and the venue/case number of this action (but not any other settlement details) for such
15 purposes.

16 49. Exhibits Incorporated by Reference. The terms of this Stipulation include the terms
17 set forth in any attached exhibits, which are incorporated by this reference as though fully set forth
18 herein. Any exhibit to this Stipulation is an integral part of the Settlement.

19 50. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of
20 this Action, except such proceedings necessary to implement and obtain an Order granting Final
21 Approval of the terms of the Settlement and to the extent any Arbitration Class Members submit a
22 valid and timely Request for Exclusion. The Parties further agree that the mutual, voluntary
23 cessation of litigation shall terminate either as of the Effective Date or the date upon which this
24 Settlement has been denied by the Court and all subsequent attempts to cure deficiencies pursuant
25 to Paragraph 23 have ended.

26 51. Invalidity of Any Provision. Before declaring any provision of this Stipulation
27 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
28 consistent with applicable precedents so as to define all provisions of this Settlement valid and

1 enforceable.

2 52. Class Certification for Settlement Purposes Only. The Parties agree to stipulate to
3 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not
4 approved, the stipulation to certification will be void. The Parties further agree that certification
5 for purposes of the Settlement is not an admission that class certification is proper under the
6 standard applied to contested certification motions and that this Settlement will not be admissible
7 in this or any other proceeding as evidence that (i) a class should or should not be certified, or (ii)
8 CarMax is or is not liable to the Class Representatives or the putative Class Members.

9 53. Adding Class Claims for Settlement Purposes Only. CarMax agrees to stipulate to
10 allow Plaintiffs to add Class claims against CarMax in the Action for the purpose of effectuating
11 the Settlement, as such was considered as part of the Parties' settlement negotiations. Attached
12 hereto as **Exhibit D** is a Third Amended Class Action Complaint, to be deemed the operative
13 complaint in this matter as of the date that the Preliminary Approval Order is entered. If, for any
14 reason, the Settlement is not approved and/or final approval is not granted as anticipated in this
15 Stipulation, CarMax reserves the right to object to the addition of Class claims against CarMax.

16 54. All Terms Subject to Final Court Approval. All amounts and procedures described
17 in this Stipulation shall be subject to final Court approval.

18 55. Execution of Necessary Documents. All Parties shall execute all documents
19 reasonably necessary to effectuate the terms of this Settlement.

20 56. Binding Agreement. The Parties intend that this Settlement shall be fully
21 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
22 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
23 otherwise might apply under federal or state law.

24
25 DATED: 6/11, 2020

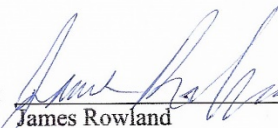
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27 By: 

Craig Weiss

28 Plaintiff and Class Representative

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DATED: 6/11, 2020

By: 
James Rowland
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Ryan Gomez
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Jorge Iraheta
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Parny Milien
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Patrick Roe
Plaintiff and Class Representative

DATED: _____, 2020

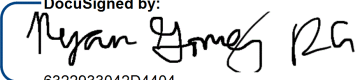
By: _____
Robert Schriner
Plaintiff and Class Representative

1 DATED: _____, 2020

3 By: _____
4 James Rowland

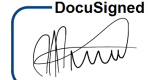
5 Plaintiff and Class Representative

6 DATED: 6/12/2020
7 _____, 2020

8 DocuSigned by:
9 
10 By: 6322933042D4404...
11 Ryan Gomez

12 Plaintiff and Class Representative

13 DATED: 6/12/2020
14 _____, 2020

15 DocuSigned by:
16 
17 By: 954BA050DBE3416...
18 Jorge Iraheta

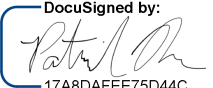
19 Plaintiff and Class Representative

20 DATED: _____, 2020

21 By: _____
22 Parny Milien

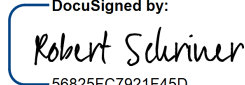
23 Plaintiff and Class Representative

24 DATED: 6/13/2020
25 _____, 2020

26 DocuSigned by:
27 
28 By: 17A8DAFEF75D44C
Patrick Roe

Plaintiff and Class Representative

DATED: 6/16/2020
_____, 2020

DocuSigned by:

By: 56825FC7921F45D...
Robert Schriener

Plaintiff and Class Representative

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DATED: _____, 2020

By: _____
James Rowland

Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Ryan Gomez

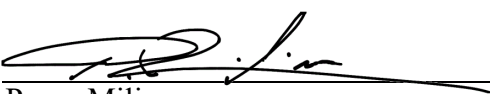
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Jorge Iraheta

Plaintiff and Class Representative

DATED: 6/16/2020, 2020

By:  _____
Parny Milien

Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Patrick Roe

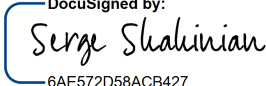
Plaintiff and Class Representative

DATED: _____, 2020

By: _____
Robert Schriener

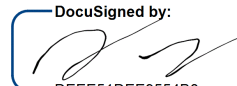
Plaintiff and Class Representative

1 DATED: 6/14/2020
2 _____, 2020

3 By: 
4 Serge Shahinian

Plaintiff and Class Representative

5 DATED: 6/12/2020
6 _____, 2020

7 By: 
8 Joshua Tariff

Plaintiff and Class Representative

9 DATED: _____, 2020
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11 By: _____
12 Phillip Viener

Plaintiff and Class Representative

13 DATED: _____, 2020
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15 By: _____
16 Aleena Iqbal

Plaintiff and Class Representative

17 DATED: _____, 2020
18

19 By: _____
20 Emil Milisci

Plaintiff and Class Representative

21 DATED: _____, 2020
22

23 By: _____
24 Derek McElhannon

Plaintiff and Class Representative

1 DATED: _____, 2020

2
3 By: _____
4 Serge Shahinian

5 Plaintiff and Class Representative

6 DATED: _____, 2020

7 By: _____
8 Joshua Tariff

9 Plaintiff and Class Representative

10 DATED: 6/15/2020 _____, 2020

DocuSigned by:
Helene Viener Schuck
1A507F0799FC438...

11 By: on behalf of Jacqueline W. Viener
12 Phillip Viener

13 Plaintiff and Class Representative

14 DATED: _____, 2020

15 By: _____
16 Aleena Iqbal

17 Plaintiff and Class Representative

18 DATED: _____, 2020

19 By: _____
20 Emil Milisci

21 Plaintiff and Class Representative

22 DATED: _____, 2020

23 By: _____
24 Derek McElhannon

25 Plaintiff and Class Representative

1 DATED: _____, 2020

3 By: _____
4 Serge Shahinian

5 Plaintiff and Class Representative

6 DATED: _____, 2020

7 By: _____
8 Joshua Tariff

9 Plaintiff and Class Representative

10 DATED: _____, 2020

11 By: _____
12 Phillip Viener

13 Plaintiff and Class Representative

14 DATED: Jun 16, 2020, 2020

15 By: 
16 Aleena Iqbal


17 Plaintiff and Class Representative

18 DATED: m, 2020

19 By: 
20 Emil Milisci


21 Plaintiff and Class Representative

22 DATED: 7, 2020

23 By: 
24 Derek McElhannon

25 Plaintiff and Class Representative

1 DATED: June 18, 2020, 2020

2
3 By: 
4 Christopher Syharath


5 Plaintiff and Class Representative

6 DATED: June 18, 2020, 2020

7 By: 
8 Ruben Santiago

9 Plaintiff and Class Representative

10 DATED: June 18, 2020, 2020

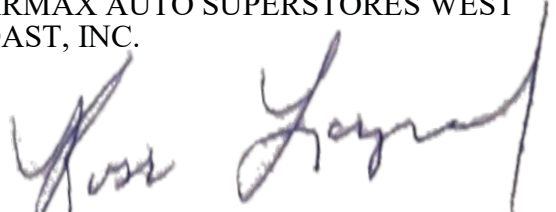
11 By: 
12 Michael Lantis

13 Plaintiff and Class Representative

14 DATED: July 1, 2020

15 CARMAX AUTO SUPERSTORES
16 CALIFORNIA, LLC (erroneously sued as
17 CARMAX SUPERSTORES CALIFORNIA,
18 LLC)

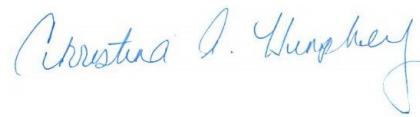
19 CARMAX AUTO SUPERSTORES WEST
20 COAST, INC.

21 By: 
22 Ross Longood

23 Deputy General Counsel

24 DATED: June 19, 2020

25 CHRISTINA HUMPHREY LAW, P.C.


26 By: 
27 Christina A. Humphrey

28 Attorneys for Plaintiffs

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DATED: June 22,, 2020


WHITEHEAD EMPLOYMENT LAW

By: 
Jacob N. Whitehead

Attorneys for Plaintiffs

DATED: June 22, 2020

McNICHOLAS & McNICHOLAS, LLP

By: 
Patrick McNicholas

Attorneys for Plaintiffs

DATED: _____, 2020

TOWER LEGAL GROUP

By: _____
James A. Clark

Attorneys for Plaintiffs

DATED: _____, 2020

BERENJI LAW FIRM, APC

By: _____
Shadie L. Berenji

Attorneys for Plaintiffs

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DATED: _____, 2020

WHITEHEAD EMPLOYMENT LAW

By: _____
Jacob N. Whitehead

Attorneys for Plaintiffs

DATED: _____, 2020


McNICHOLAS & McNICHOLAS, LLP

By: _____
Patrick McNicholas

Attorneys for Plaintiffs

DATED: June 11 _____, 2020

TOWER LEGAL GROUP

By:  _____
James A. Clark

Attorneys for Plaintiffs

DATED: _____, 2020

BERENJI LAW FIRM, APC

By: _____
Shadie L. Berenji

Attorneys for Plaintiffs

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DATED: _____, 2020

WHITEHEAD EMPLOYMENT LAW

By: _____
Jacob N. Whitehead

Attorneys for Plaintiffs

DATED: _____, 2020

McNICHOLAS & McNICHOLAS, LLP

By: _____
Patrick McNicholas

Attorneys for Plaintiffs

DATED: _____, 2020

TOWER LEGAL GROUP

By: _____
James A. Clark

Attorneys for Plaintiffs

DATED: June 15 _____, 2020

BERENJI LAW FIRM, APC

By:  _____
Shadie L. Berenji

Attorneys for Plaintiffs

1 DATED: July 1, 2020

2 OGLETREE, DEAKINS, NASH, SMOAK &
3 STEWART, P.C.

4 

5 By: _____

6 Jack S. Sholkoff
7 Jennifer L. Katz

8 Attorneys for Defendants
9 CARMAX AUTO SUPERSTORES
10 CALIFORNIA, LLC (erroneously sued as
11 CARMAX SUPERSTORES CALIFORNIA,
12 LLC) and CARMAX AUTO SUPERSTORES
13 WEST COAST, INC.
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