

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

ANTHONY NICOLL, on behalf of himself and all
“aggrieved employees” pursuant to Labor Code §
2698 *et seq.*

Plaintiffs,

v.

CAPPO MANAGEMENT XXXI, INC., a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 56-2019-00523418-CU-OE-VTA

*Assigned to Honorable Matthew P. Guasco,
Department 20*

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$1,000,000 to pay claims to commissioned sales associate and service advisor employees employed by Defendant Cappo Management XXXI, Inc., together with its affiliated entities, Cappo Management XII, Inc., Cappo Management IX, Inc., Victory Automotive Group, Inc., Victory Automotive Group, LLC, Cappo Management XXXIII, Inc., Cappo Management XLVIII, LLC, Cappo Management XXXIV, Inc., Cappo Management XXXV, Inc., Cappo Management LI, LLC, Cappo Management XXVIII, Inc., Downtown Ford Sales, Cappo Management XXIX, Inc., Cappo Management XXVI, Inc., Cappo Management XLVI, LLC, Cappo Management XL, LLC, Cappo Management XXVII, Inc., Cappo Management XXIII, Inc., Cappo Management XLI, LLC, Cappo Management XLV, LLC, and Cappo Management XLIX, LLC (all together, “Cappo” or “Defendant”), in California at any time during the period January 15, 2015 through August 20, 2019.
- The settlement resolves a lawsuit over whether Defendant failed to pay all wages due and owing during employment, including overtime wages, to timely issue wages upon separation of employment, to provide meal and rest periods or compensation in lieu thereof, and to issue accurate and complete wage statements. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$350,000 as attorneys’ fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully. Further information and documents are available on the settlement website, www.CappoManagementClassAction.com.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Cappo about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On January 15, 2019, plaintiff Anthony Nicoll filed this lawsuit in the Ventura County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code. The Lawsuit seeks to certify the following class: all persons employed by Defendant as commissioned sales associate and service advisor employees from January 15, 2015 through August 20, 2019 ("Class Period"). The lawsuit alleges that members of the Class were not paid all wages due and owing during employment, including overtime wages, were not timely issued wages upon separation of employment, were not provided all meal and rest periods or compensation in lieu thereof, and were not issued accurate and complete wage statements. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
 Alex P. Katofsky, Esq.
 Gaines & Gaines, APLC
 27200 Agoura Road, Suite 101
 Calabasas, CA 91301
 Phone: (866) 550-0855

Defendant's Attorneys

Charles O. Thompson, Esq.
 Alexa Hankard, Esq.
 Greenberg Traurig, LLP
 Embarcadero Center, Suite 3000
 San Francisco, CA 94111

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on his claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses the following class: All persons employed by Defendant as commissioned sales associate and service advisor employees from January 15, 2015 through August 20, 2019.

C. What does the Settlement provide?

1. Gross Settlement Amount.

Defendant will pay \$1,000,000 (the “Maximum Settlement Amount”) to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$37,500 to the California Labor and Workforce Development Agency; (2) Class Counsel’s attorneys’ fees in an amount set by the Court not to exceed \$350,000 and Class Counsel’s documented litigation costs in an amount set by the Court not to exceed \$15,000; (3) a service payment to the Class Representative set by the court, not to exceed \$10,000, for his service in the Action; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$18,000. The amount of the Maximum Settlement Amount remaining after these payments is the “Net Settlement Proceeds.”

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What are you giving up to get a payment or stay in the Class?

Upon the Effective Date, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and any of its related companies, assigns, current and former employees, insurers and attorneys (“Released Parties”) from any and all Released Claims which arose during the Release Period (January 15, 2015 through January 24, 2020. “Released Claims” are all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each participating Class Member had, now has, or may hereafter claim to have against the Released Parties that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Action. The Released Claims specifically include, but are not limited to, wages, damages, interest or penalties recoverable for (1) failure to pay all wages due; (2) failure to provide meal or rest periods or compensation in lieu thereof; (3) knowing and intentional failure to comply with itemized employee wage statement provisions; (4) failure to timely pay all wages due at separation of employment; (5) violation of Business and Professions Code section 17200 related to the claims alleged herein; and (6) penalties under PAGA related to the claims alleged herein.

E. How is my share of the Settlement calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an individual payment amount, which is a share of the Net Settlement Proceeds (Net Settlement Proceeds is calculated by deducting attorneys’ fees and costs, claims administration costs, any service payment to the Class Representative, and the LWDA’s share of the PAGA penalty payment from the Maximum Settlement Amount) (“Individual Payment Amount”).

The Individual Payment Amount will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all Class Members in California in a Covered Position (either a commissioned sales employee or a service advisor) during the Class Period to yield the applicable weekly rate. The weekly rate will be multiplied by the number of weeks each individual Class Member worked for Defendant in

California in a Covered Position during the Class Period to yield the Individual Payment Amount for each Class Member. All weeks worked calculations shall be made by reference to Class Members' hire and termination dates and payroll data contained in the records kept by Defendant in the ordinary course of business during the Class Period.

For tax purposes, each Individual Payment Amount will be apportioned (a) 25% to wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099, if required); and (c) 25% to interest (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked <<weeks>> weeks while employed in California in a Covered Position between January 15, 2019 and January 24, 2020. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$Est.SettAmount>>. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than April 4, 2020. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on May 6, 2020, at 8:20 a.m., in Courtroom 20, Judge Matthew P. Guasco presiding, of the Ventura County Superior Court, located at 800 South Victoria Avenue, Ventura, CA 93009. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiffs' Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than April 4, 2020. The Settlement Administrator's address is Cappel Management Settlement Administrator, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781.

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at Cappel Management Settlement Administrator, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781. Objections must be postmarked no later than April 4, 2020.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than April 4, 2020.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Ventura County Superior Court, located at 800 South Victoria Avenue, Ventura, CA 93009.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at Cappel Management Settlement Administrator, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781, (888) 250-6810 or Plaintiff’s Counsel, Gaines & Gaines, APLC, at 866-550-0855. Please refer to the Cappel Management Class Action Settlement. Further information and documents are also available on the settlement website, www.CappelManagementClassAction.com.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**