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15  
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF VENTURA**

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

20 Plaintiffs,

21 v.

22 CAPPO MANAGEMENT XXXI, INC., a  
California corporation, and DOES 1 through  
23 10, inclusive,

24 Defendants.

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

*Assigned to the Hon. Matthew P. Guasco,  
Dept. 20*

**CLASS ACTION**

**SETTLEMENT AGREEMENT AND  
RELEASE OF CLAIMS**

*Complaint Filed: January 15, 2019*

1                                    **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2                    This Settlement Agreement and Release of Claims ("Settlement Agreement") is made and  
3 entered into by and between Plaintiff Anthony Nicoll ("Nicoll" or "Plaintiff" or "Class  
4 Representative"), individually and on behalf of all others similarly situated, and Defendant Cappo  
5 Management XXXI, Inc., together with its affiliated entities, Cappo Management XII, Inc.,  
6 Cappo Management IX, Inc., Victory Automotive Group, Inc., Victory Automotive Group, LLC,  
7 Cappo Management XXXIII, Inc., Cappo Management XLVIII, LLC, Cappo Management  
8 XXXIV, Inc., Cappo Management XXXV, Inc., Cappo Management LI, LLC, Cappo  
9 Management XXVIII, Inc., Downtown Ford Sales, Cappo Management XXIX, Inc., Cappo  
10 Management XXVI, Inc., Cappo Management XLVI, LLC, Cappo Management XL, LLC, Cappo  
11 Management XXVII, Inc., Cappo Management XXIII, Inc., Cappo Management XLI, LLC,  
12 Cappo Management XLV, LLC, and Cappo Management XLIX, LLC (all together, "Cappo" or  
13 "Defendant"), subject to the terms and conditions herein and the Court's approval.

14                    **A.     Definitions.**

15                    1.     Plaintiff and the Settlement Class (as defined below) and Defendant are  
16 collectively referred to herein as "the Parties."

17                    2.     Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of  
18 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC  
19 shall be designated as "Class Counsel."

20                    3.     The "Action" means the case entitled "*ANTHONY NICOLL, on behalf of himself*  
21 *and all "aggrieved employees" pursuant to Labor Code § 2698 et seq., Plaintiffs, v. CAPPO*  
22 *MANAGEMENT XXXI, INC., a California corporation, and DOES 1 through 10, inclusive,*  
23 *Defendants,*" Case No. 56-2019-00523418-CU-OE-VTA, pending before the Superior Court of  
24 the State of California for the County of Ventura.

25                    4.     The "Settlement Class" shall be defined as "all persons employed by Defendant as  
26 commissioned sales associate and service advisor employees from January 15, 2015 through  
27 August 20, 2019. Defendant represents that the Class includes no more than 1,045 members as  
28 of August 20, 2019.

1           5.     The "Class Period" is January 15, 2015 through August 20, 2019.

2           6.     The "Release Period" is January 15, 2015 through the date the Court enters an  
3 order granting preliminary approval of this Settlement or January 31, 2020, whichever is earlier.

4           7.     "Covered Position" means the job titles of commissioned sales associate and  
5 service advisor.

6           8.     Members of the Settlement Class shall collectively be referred to as a "Class  
7 Member" or "Class Members." Any Class Member who files a timely request for exclusion, as  
8 detailed below, will be excluded from the final Settlement Class.

9     **B.     General.**

10          1.     On November 15, 2018 Plaintiff exhausted the pre-filing requirements of the  
11 Labor Code Private Attorneys General Act of 2004 ("PAGA").

12          2.     On or about January 15, 2019, Plaintiff initiated the Action by filing a Complaint,  
13 pursuant to PAGA, on behalf of himself and all other aggrieved employees. As amended in the  
14 form attached hereto as Exhibit 3, the Action asserts direct class and representative action claims  
15 against Defendant for (1) failure to pay all minimum and overtime wages (Labor Code §§ 510,  
16 1194 and 1194.2); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code  
17 §§ 226.7); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§  
18 226.7 and 512); (4) knowing and intentional failure to comply with itemized employee wage  
19 statement provisions (Labor Code § 226(e)); (5) failure to timely pay wages due at separation of  
20 employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code § 17200;  
21 and (7) penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203,  
22 226(a), 226.7, 510, 512, and 1194 (the "First Amended Complaint").

23          3.     Defendant denies any liability or wrongdoing of any kind associated with the  
24 claims alleged in the Action, and further denies that the Action is appropriate for class treatment  
25 for any purpose other than this settlement. Defendant contends that it has complied at all times  
26 with the California Labor Code. It is Defendant's position that, if this case were to be litigated,  
27 class certification would be inappropriate because Plaintiff is not an adequate class representative,  
28 Plaintiff's claims are not typical of putative class members, and individual issues predominate

1 over class issues. The Action, the negotiation and execution of this Settlement Agreement, and  
2 all acts performed or documents executed pursuant to or in furtherance of the Settlement  
3 Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf of  
4 Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action  
5 before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not  
6 be used as, an admission or evidence of the appropriateness of these or similar claims for class  
7 certification in the Action or with respect to any other proceeding.

8 4. The Class Representative contends that Defendant violated the California Labor  
9 Code and that this case is appropriate for class certification.

10 5. Class Counsel represent that they have conducted a thorough investigation into the  
11 facts and law during the prosecution of this class action case, including the exchange of extensive  
12 informal discovery and the review and verification of statistical data and other facts and  
13 information provided by Defendant. Counsel for the Parties also represent that they have  
14 investigated the applicable law as applied to the facts discovered regarding the alleged claims of  
15 Plaintiffs and potential defenses thereto, and the damages claimed by Plaintiff.

16 6. On June 24, 2019, the Parties participated in a full day mediation session with Jeff  
17 Ross, Esq., a respected mediator with extensive experience resolving employment actions. The  
18 basic terms of this settlement agreement were reached several months following the mediation  
19 with the evaluative efforts of Mr. Ross.

20 7. Based on their own independent investigation and evaluation, Class Counsel are of  
21 the opinion (and will so represent to the Court) that settlement for the consideration and on the  
22 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best  
23 interest of the Settlement Class in light of all known facts and circumstances, including the risk of  
24 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses  
25 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)  
26 that this settlement is fair and in the best interest of the Settlement Class.

27 8. The Parties agree that the settlement class described herein may be certified for  
28 settlement purposes only and that any motion for preliminary approval seeking, *inter alia*,

1 certification of the Settlement Class is for purposes of the settlement only. If for any reason the  
2 settlement is not approved, the certification will have no force or effect and will immediately be  
3 revoked. The Parties further agree that certification for purposes of the settlement is in no way an  
4 admission that class certification is proper under the more stringent standard applied for litigation  
5 and that evidence of this limited stipulation for settlement purposes only will not be admissible  
6 for any purpose in this or any other proceeding.

7 **C. Terms of Settlement.**

8 1. The financial terms of the settlement are as follows:

9 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for  
10 a non-reversionary Maximum Settlement Amount of One Million U.S. Dollars (\$1,000,000.00)  
11 ("the Maximum Settlement Amount"). The Maximum Settlement Amount includes the  
12 attorneys' fees of Class Counsel, litigation costs and expenses (which includes, without  
13 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in  
14 documenting the settlement, providing any notices required as part of the settlement, securing  
15 Court approval of the settlement, and obtaining judgment in the Action), the service payment to  
16 the Class Representative, as approved by the Court, the payment to the California Labor and  
17 Workforce Development Agency ("LWDA") pursuant to the PAGA claims in the Action, and all  
18 costs of administration, including, without limitation, settlement administration fees and  
19 expenses. Defendant shall pay all employer payroll tax obligations due on wage payments made  
20 from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum  
21 Settlement Amount.

22 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the  
23 Maximum Settlement Amount less the amounts approved and awarded by the Court for:  
24 attorneys' fees and documented litigation costs and expenses incurred or advanced by Class  
25 Counsel, the service payment to the Class Representative, the payment to the LWDA pursuant to  
26 PAGA, and the costs of administering the settlement.

27 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment  
28 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member

1 who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).  
2 The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by  
3 the total weeks worked by all participating Class Members in California during the Release  
4 Period in a Covered Position, which will yield the applicable weekly rate. The weekly rate shall  
5 be multiplied by the number of weeks each individual participating Class Member worked for  
6 Defendant in California during the Release Period in a Covered Position to yield their Individual  
7 Payment Amount. Each Class Member who does not opt out of the Settlement shall be paid an  
8 Individual Payment Amount. All weeks worked calculations herein shall be made by reference to  
9 Class Members' hire and termination dates and payroll data contained in the records kept by  
10 Defendant in the ordinary course of business during the Release Period.

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

17 (d) **PAGA Payments:** The Parties agree that Fifty Thousand Dollars  
18 (\$50,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this  
19 amount, Seventy-Five Percent (75%), or Thirty Seven Thousand Five Hundred Dollars  
20 (\$37,500.00) shall be paid to the LWDA, and Twenty-Five Percent (25%), or Twelve Thousand  
21 Five Hundred Dollars (\$12,500.00) shall be paid to Class Members who have not submitted a  
22 valid and timely Request for Exclusion Form as part of the Net Settlement Proceeds.

23 (e) **Service Payment to Class Representative:** The amount awarded to the  
24 Class Representative as a service payment will be set by the Court in its discretion, not to exceed  
25 Ten Thousand Dollars (\$10,000.00). This amount will be deducted from the Maximum  
26 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for his service  
27 payment. Defendant agrees not to dispute or otherwise object to the service payment if Plaintiff  
28 requests \$10,000 or less.

1 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be  
 2 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into  
 3 account the settlement award that has been made available for the Settlement Class by the efforts  
 4 of Class Counsel. The amount awarded shall not exceed Three Hundred Fifty Thousand Dollars  
 5 (\$350,000.00) (i.e., 35% of the Maximum Settlement Amount). An IRS Form 1099 will be  
 6 issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not to  
 7 dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as the  
 8 request does not exceed \$350,000.

9 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from  
 10 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-  
 11 pocket litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000.00). An  
 12 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.  
 13 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by  
 14 Class Counsel so long as the request does not exceed \$15,000.

15 (h) **Settlement Administration Costs:** The fees and other charges of the  
 16 Settlement Administrator to administer the Settlement are expected to total no more than Eighteen  
 17 Thousand Dollars (\$18,000.00) and will be paid from the Maximum Settlement Amount. These  
 18 fees shall include any costs associated with the required tax reporting on any Individual Payment  
 19 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court,  
 20 the Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims'  
 21 administrator ("Settlement Administrator") to perform all acts related to providing notice to the  
 22 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing  
 23 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)  
 24 administering the settlement; (c) processing exclusions and objections; (d) resolving disputes; (e)  
 25 distributing the Maximum Settlement Amount as directed by the Court and set forth herein; (f)  
 26 tax reporting; (g) providing necessary weekly status reports; and (h) other duties and  
 27 responsibilities set forth herein.

28

1 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that  
2 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant  
3 makes no representations regarding tax obligations or consequences, if any, related to this  
4 Settlement Agreement.

5 **D. Release of Claims.**

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

22 3. In exchange for his service payment, Plaintiff releases Defendant and the  
23 Released Parties from any and all claims which accrued during his employment and through the  
24 date of his execution of this Settlement. Plaintiff acknowledges that he has had the opportunity  
25 to review and has reviewed California Civil Code Section 1542, which provides:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
27 THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
28 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE AND THAT, IF



1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
2 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR  
3 OR RELEASED PARTY.

4 Being fully informed of this provision of the Civil Code and understanding its provisions,  
5 as consideration for this Agreement, Plaintiff agrees to waive any rights under that section and  
6 acknowledges that this Agreement and the release contained herein extends to all claims that he  
7 has or might have against the persons and entities released, including those which are presently  
8 unknown to them, with respect to the Released Claims only.

8 **E. Notice and Exclusion Process.**

9 1. Within twenty-one (21) calendar days after entry of the order granting preliminary  
10 approval, Defendant shall provide to the Settlement Administrator a list of all Class Members,  
11 including their last known addresses, telephone numbers, social security numbers, and their dates  
12 of employment in California during the Release Period in a Covered Position ("Settlement Class  
13 Information"). The names, addresses, telephone numbers, and Social Security numbers will only  
14 be disclosed to the Settlement Administrator and not to Plaintiff's Counsel. All information  
15 provided to the Settlement Administrator will be marked CONFIDENTIAL. This information  
16 shall be kept confidential and shall not be disclosed, either in writing or orally, by the Settlement  
17 Administrator. The Settlement Administrator shall use due care with respect to the storage,  
18 custody, use, and/or dissemination of the confidential information. Such information must be  
19 stored in a secure fashion and all persons who access the data must agree to keep it confidential.

20 2. A notice of pendency of class action, proposed settlement and hearing date for  
21 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the  
22 Court, shall be sent by the Settlement Administrator to the Class Members in English only, by  
23 first class mail, within twenty-one (21) calendar days after entry of the order granting preliminary  
24 approval. Attached to the Class Notice will be a request for exclusion form ("Request for  
25 Exclusion Form") in the form attached hereto as Exhibit 2.

26 3. The Settlement Administrator will make reasonable efforts to ensure that the Class  
27 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be  
28

1 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the  
2 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the  
3 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the  
4 notices.

5 4. At the same time the Class Notice is mailed Class Members, the Settlement  
6 Administrator shall publish a website, titled [www.CappoManagementClassAction.com](http://www.CappoManagementClassAction.com), or  
7 similar, which shall remain online through the check cashing deadline and contain the operative  
8 complaint, the motions for preliminary and final approval, this Settlement Agreement, the Class  
9 Notice, and the judgment in the Action. Requests for exclusion and objections may not be  
10 submitted through the website.

11 5. Each Class Member will be fully advised of the settlement, the ability to object to  
12 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice and the  
13 settlement website will inform the Class Members of the Court-established deadlines for filing  
14 objections and a Request for Exclusion Form.

15 6. Each Class Notice will contain personalized information setting forth the number  
16 of weeks each Class Member worked for Defendant in California in a Covered Position during  
17 the Release Period and their estimated Individual Payment Amount. To the extent a Class  
18 Member disputes any of the information listed on his or her Class Notice, the Class Member may  
19 produce evidence to the Settlement Administrator showing such information the Class Member  
20 contends should be reflected in the Class Notice. Defendant's records will be presumed  
21 determinative, however, and the Settlement Administrator's decision on these matters will be  
22 final. The Class Notice will also set forth IRS W-9 information if required.

23 7. All Class Members who do not submit a Request for Exclusion Form will be  
24 eligible to receive an Individual Payment Amount, which shall be mailed to them if and when the  
25 Effective Date occurs.

26 8. In order to elect not to participate in the Settlement, a Class Member must submit a  
27 Request for Exclusion, and mail it to the Settlement Administrator no later than forty-five (45)  
28 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to

1 Class Members, unless the Court requires a longer period, in which case the Court ordered  
2 exclusion period will apply. The date of the postmark shall be deemed the date of submission.  
3 The timeliness of submitted Request for Exclusion Forms will be determined by valid postmark.  
4 If the 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended  
5 to the next day on which the U.S. Postal Service is open.

6 9. The deadline for submission of Exclusion Forms shall be extended once by 30  
7 days for those Class Members whose Class Notice and Exclusion Form are returned as  
8 "undeliverable." If the 30th day falls on a Sunday or federal holiday, this deadline will be  
9 extended to the next day on which the U.S. Postal Service is open.

10 10. The Settlement Administrator will search for additional addresses on returned mail  
11 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15  
12 days of receipt of the returned mail. The 30-day extended time limit will run from the date of the  
13 second mailing for those Class Members. To the extent a Class Notice from the initial mailing is  
14 not returned within 30 days, it shall be deemed to have been sent to a valid address even if it is  
15 thereafter returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be  
16 used to locate Class Members. If the initial Class Notice and Request for Exclusion form is  
17 returned, the Settlement Administrator will search using the social security number for a more  
18 current address. If no address is found within 10 days, no further action is required.

19 11. The Settlement Administrator will notify the Parties of the total number of valid  
20 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the  
21 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice  
22 and Request for Exclusion Forms to Class Members).

23 12. In order to object to the settlement, a Class Member must mail his or her objection  
24 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the  
25 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a  
26 longer period, in which case the Court ordered objection period will apply. If the 45th day falls  
27 on a Sunday or federal holiday, the time to object to the settlement will be extended to the next  
28

1 day on which the U.S. Postal Service is open. Under no circumstances shall the objection  
2 deadline be extended for any reason.

3 13. The Settlement Administrator shall provide to the Parties, at least twelve (12)  
4 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a  
5 declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice  
6 and Request for Exclusion Forms. The Settlement Administrator will also provide to the Parties,  
7 at least twelve (12) calendar days prior to the final approval hearing, or as otherwise ordered by  
8 the Court, a report listing the amount of all payments to be made to each Class Member without  
9 names or personal identifying information.

10 14. Defendant shall deposit the Maximum Settlement Amount and all employer  
11 payroll tax obligations with the Settlement Administrator no later than ten (10) calendar days  
12 after the Effective Date. The effective date of this Settlement Agreement ("Effective Date") is the  
13 date the Court signs an order granting final approval of the settlement and entering judgment  
14 thereon. If objections to the settlement are filed, the Effective Date of the settlement is the  
15 sixtieth (60th) day after notice of the final approval order is mailed, unless an appeal is filed, in  
16 which case the Effective Date is the day after (1) the settlement is upheld by the Court of  
17 Appeals, or (2) all appeals are dismissed.

18 15. The Settlement Administrator shall disburse the Maximum Settlement Amount  
19 within fifteen (15) calendar days after its receipt thereof. Class Members must cash each of their  
20 Individual Payment Amount checks within one hundred eighty (180) calendar days after they are  
21 mailed by the Settlement Administrator. The value of any checks uncashed more than one  
22 hundred eighty (180) days after mailing shall be paid to the State of California Controller's  
23 Office, to be held in the name of the respective Class Member.

24 **F. Duties of the Parties Prior to Court Approval.**

25 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the  
26 Court for preliminary approval of this settlement and entry of an order accomplishing the  
27 following:  
28

1 (a) scheduling a fairness hearing on the question of whether the proposed  
2 settlement should be finally approved as fair, reasonable and adequate as to the Class  
3 Members;

4 (b) approving as to form and content the proposed Class Notice;

5 (c) approving as to form and content the proposed Request for Exclusion  
6 Form;

7 (d) preliminarily certifying the Settlement Class for purposes of settlement;

8 (e) preliminarily approving the PAGA payment of \$37,500 to the LWDA;

9 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;

10 (g) preliminarily setting the service payment to the Class Representative; and

11 (h) preliminarily approving ILYM Group, Inc. as the Settlement  
12 Administrator and its estimated fees and costs of \$18,000.

13 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support  
14 of Plaintiffs' unopposed motion for preliminary approval of the settlement.

15 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

16 1. In connection with the hearing on final approval of the settlement provided for in  
17 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)  
18 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise  
19 ordered by the Court):

20 (a) approving the settlement, adjudging the terms thereof to be fair,  
21 reasonable and adequate, and directing consummation of its terms and provisions;

22 (b) approving Class Counsel's application for an award of attorneys' fees  
23 and reimbursement of documented litigation costs and expenses, the service payment to the  
24 Class Representative, the payment to the LWDA, and the costs of administering the settlement;  
25 and

26 (c) Entering judgment in this Action in accordance with this Stipulation,  
27 pursuant to Cal. Rules of Court, Rule 3.769(h).  
28

2. Class Counsel shall file an application for attorneys' fees and reimbursement of costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered by the Court).

**H. Miscellaneous Provisions:**

**1. Voiding the Agreement.**

A failure of the Court to approve any material condition of this Settlement Agreement which effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or materially modified on appellate review, shall render the entire Stipulation of Settlement voidable and unenforceable as to all Parties herein at the option of any Party.

**2. Parties' Authority.**

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

**3. Mutual Full Cooperation.**

The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement.

**4. No Prior Assignments.**

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Stipulation of Settlement.

\\

1           5.     **No Admission.**

2           Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be  
3 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
4 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this  
5 Settlement Agreement with the intention of avoiding further disputes and litigation with the  
6 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and  
7 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408  
8 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or  
9 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

10          6.     **Notices.**

11          Unless otherwise specifically provided herein, all notices, demands or other  
12 communications given hereunder shall be in writing and shall be deemed to have been duly given  
13 as of the third business day after mailing by United States registered or certified mail, return  
14 receipt requested, addressed:

15                   **To Plaintiff and the Settlement Class:**

16                   Daniel F. Gaines, Esq.  
17                   Alex P. Katofsky, Esq.  
18                   GAINES & GAINES, APLC  
19                   27200 Agoura Road, Suite 101  
20                   Calabasas, CA 91301

21                   **To Defendant:**

22                   Charles O. Thompson, Esq.  
23                   Alexa Hankard, Esq.  
24                   GREENBERG TRAURIG, LLP  
25                   Embarcadero Center, Suite 3000  
26                   San Francisco, CA 94111

27          7.     **Construction.**

28          The Parties hereto agree that the terms and conditions of this Settlement Agreement are  
the result of lengthy, intensive arms' length negotiations between the Parties and that this  
Settlement Agreement shall not be construed in favor of or against any Party by reason of the  
extent to which any Party or his or its counsel participated in the drafting of this Settlement  
Agreement.

1           **8. Captions and Interpretations.**

2           Paragraph titles or captions contained herein are inserted as a matter of convenience and  
3           for reference, and in no way define, limit, extend, or describe the scope of this Settlement  
4           Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and  
5           not merely a recital.

6           **9. Modification.**

7           This Settlement Agreement may not be changed, altered, or modified, except in writing  
8           and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not  
9           be discharged except by performance in accordance with its terms or by a writing signed by each  
10          of the Parties hereto on their attorneys.

11          **10. Integration Clause.**

12          This Settlement Agreement contains the entire agreement between the Parties relating to  
13          the settlement and transactions contemplated hereby, and all prior or contemporaneous  
14          agreements, understandings, representations, and statements, whether oral or written and whether  
15          by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived  
16          except in writing.

17          **11. Binding on Assigns.**

18          This Settlement Agreement shall be binding upon and inure to the benefit of the Parties  
19          hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

20          **12. Governing Law.**

21          All terms of this Settlement Agreement and its exhibits shall be governed by and  
22          interpreted according to the laws of the State of California, without giving effect to any conflict of  
23          law principles or choice of law principles.

24          **13. Signatures of All Class Members Unnecessary to be Binding.**

25          It is agreed that, because the members of the Settlement Class are numerous, it is  
26          impossible or impractical to have each Class Member execute this Settlement Agreement. The  
27          Class Notice, attached hereto as Exhibit 1, will advise all Class Members of the binding nature of  
28



the release provided herein and such shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

**14. Counterparts.**

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

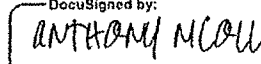
**15. Confidentiality**

Until Plaintiff files his motion for preliminary approval of the class action settlement, the Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

**16. No Publicity**

Plaintiff and his Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and his Counsel also will not post any information about the settlement on social media or their firms' websites.

Dated: October 11, 2019

DocuSigned by:  
  
 By: ANTHONY NICOLL  
 Plaintiff and Class Representative

Dated: October 24, 2019

CAPPO MANAGEMENT XXXI, INC. and its affiliated entities

By:   
 Its: Jeffrey Cappo, Pres.

**APPROVED AS TO FORM AND CONTENT:**

Dated: October 16, 2019

GAINES & GAINES, APLC

By: 

Daniel P. Gaines, Esq.  
Alex P. Katofsky, Esq.  
Counsel for Plaintiff and Class  
Representative

Dated: October 24, 2019

GREENBERG TRAURIG

By: 

Charles O. Thompson, Esq.  
Counsel for Defendant, including its  
affiliated entities