

VCSC CASE NO. 56-2020-00541764-CU-OE-VTA PAGA SETTLEMENT AGREEMENT

PARTIES

This PRIVATE ATTORNEY GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is made by and between Plaintiff Jennifer Jaime (“Plaintiff”) and Ford of Ventura, Inc. (“Ford of Ventura” or “Defendant”) (collectively Plaintiff and Ford of Ventura are referred to herein as “Parties”) subject to the approval of the Superior Court of the State of California for the County of Ventura (“Court”) and the terms and conditions set forth herein.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1. “Action” means the civil action entitled *Jennifer Jaime v. Ford of Ventura, Inc.*, filed in the Superior Court of the State of California for the County of Ventura, on June 10, 2020, Case No. 56-2020-00541764-CU-OE-VTA.

1.2. “Allegedly Aggrieved Employees” means all non-exempt hourly commissioned sales associates who worked for Defendant at any time during the PAGA Period.

1.3. “Defense Counsel” means the law firm of LightGabler.

1.4. The “Effective Date” means the later of (a) ten (10) days after entry of the Court’s order granting approval of the Settlement Agreement, or (b) the date of the final resolution of any appeal of the Court’s order granting approval of the Settlement Agreement that has been filed.

1.5. “Enhancement Award” means a payment, subject to Court approval not to exceed \$5,000, to Plaintiff as consideration in exchange for release of Plaintiff’s claims and as an award for her service as the PAGA representative in the Action.

1.6. “Notice” means the form of the document attached to this PAGA Settlement as Exhibit “A.”

1.7. “PAGA Fund” means the amount allocated under this PAGA Settlement, subject to Court approval, for payment to the Labor and Workforce Development Agency (“LWDA”) and the Allegedly Aggrieved Employees. The PAGA Fund equals the Settlement Fund less the Plaintiff’s Counsel Payment, the Enhancement Award, administrative costs and employer tax obligations, if any. Pursuant to California Labor Code Section 2699(i), the PAGA Fund will be allocated such that seventy-five percent (75%) of the

PAGA Fund will be paid to the LWDA and twenty-five percent (25%) percent of the PAGA Fund will be paid to the Allegedly Aggrieved Employees.

1.8. "PAGA Period" means the period from December 23, 2018, to the date of full execution of this Settlement Agreement.

1.9. "Plaintiff's Counsel" means the Otkupman Law Firm.

1.10. "Plaintiff's Counsel Payment" means the amount to be paid to Plaintiff's Counsel from the Settlement Fund, subject to Court approval, not to exceed Twenty-Four Thousand Seven Hundred and Fifty Dollars (\$24,750.00), for its attorneys' fees in addition to actual litigation expenses incurred by Plaintiff's Counsel for the Action not to exceed Five Thousand Dollars (\$5,000.00).

1.11. "Settlement Administrator" means the third-party settlement administrator Simpluris, for administration of this PAGA settlement following Court approval.

1.12. "Settlement Administrator Costs" means all costs and expenses of the Settlement Administrator, which are estimated to be \$5,000.00.

1.13. "Settlement Fund" means the total, gross settlement payment Defendant will make, subject to Court approval, to resolve the Action. The Settlement Fund equals Seventy-Five Thousand Dollars (\$75,000.00), inclusive of Plaintiff's Counsel Payment, the Enhancement Award, Settlement Administrator Costs, employer tax obligations, if any, and the PAGA Fund. Defendant's total financial obligation under this Settlement Agreement cannot exceed \$75,000.00.

2. RECITALS

2.1. A dispute has arisen between Plaintiff on the one hand, and Defendant on the other hand, arising out of and related to Plaintiff's employment and separation of employment with Defendant.

2.2. On or about December 23, 2019, Plaintiff submitted a notice to the LWDA ("PAGA Notice"), alleging violations of the Labor Code sections §§ 201-203, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, and IWC Order No. 5-2001, Section 12.

2.3. On June 10, 2020, Plaintiff filed a Complaint asserting individual and representative claims under PAGA alleging violations of Labor Code sections §§ 201-203, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, IWC Order No. 5-2001, Section 12, and seeking PAGA civil penalties. Plaintiff's Complaint

includes claims for failure to pay wages for all hours worked, failure to pay overtime wages, failure to provide meal and rest breaks or compensation in lieu thereof, failure to provide accurate, itemized wage statements, and failure to timely pay wages due at time of termination or separation.

2.4. The Parties' Counsel have thoroughly investigated the facts and applicable law relating to the claims alleged in the Complaint and defenses to those claims. Based on their investigation and evaluation of this case, Plaintiff's Counsel has concluded that the settlement described in this Settlement Agreement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, and potential adverse findings regarding liability or penalties for the claims asserted in the Complaint.

2.5. The Parties have engaged in informal discovery, which included an informal exchange of documents, including timekeeping records, payroll records, written policies/handbooks, wage statements, and other relevant documents. The Parties also engaged in discussions throughout the course of litigation regarding the factual and legal merits of Plaintiff's claims and Defendant's defenses. The Parties engaged in extensive arm's-length settlement negotiations, which involved substantive offers and counteroffers between the Parties. Ultimately, negotiations resulted in this Settlement Agreement.

2.6. The PAGA Complaint is a representative action through which Plaintiff seeks to represent approximately twenty-two (22) current and former non-exempt hourly commissioned sales associates who worked for Defendant in California during the relevant time period as specified below ("Allegedly Aggrieved Employees").

2.7. Currently, Plaintiff and Defendant agree that the total number of workweeks covering the PAGA period is approximately 210.

2.8. Therefore, in exchange for promises and conditions set forth here, the Parties agree to settle and/or dismiss the Action based on the terms set forth in this Settlement Agreement, subject to Court approval.

3. TERMS OF THE SETTLEMENT AGREEMENT

3.1. Scope of Settlement and/or Dismissal. Plaintiff, as PAGA representative and proxy for the LWDA, agrees to settle the Action on behalf of herself, the LWDA, and the Allegedly Aggrieved

Employees employed by Defendant during the PAGA Period.

3.2. The Settlement Fund. Subject to Court approval, Defendant will pay the Settlement Fund to settle the Action. The Settlement Fund will be divided as follows: payment of the PAGA Fund to the LWDA and all Allegedly Aggrieved Employees, Plaintiff's Counsel Payment, Administrative Costs, any employer tax obligations and the Enhancement Award.

3.3. Plaintiff's Counsel Attorneys' Fees And Costs. Subject to Court Approval, Defendant will not oppose Plaintiff's Counsel's application to the Court for an award of the Plaintiff's Counsel Payment consistent with the terms of this Settlement Agreement. Plaintiff's Counsel will be responsible for submitting all documents required by the Court to support the request for Plaintiff's Counsel Payment. Any reduction by the Court of Plaintiff's Counsel Payment will revert to the Settlement Fund for the benefit of the Allegedly Aggrieved Employees.

3.4. Enhancement Award. Subject to Court approval, and in addition to any payment he may otherwise receive based on this Settlement Agreement, Defendant will not oppose Plaintiff's application for the Enhancement Award of up to \$5,000. Any reduction by the Court of the Enhancement Award is not a basis for rendering this Settlement Agreement void or unenforceable. In addition, any reduction by the Court of the Enhancement Award will revert to the Settlement Fund for the benefit of the Allegedly Aggrieved Employees.

3.5. Settlement Administration Costs. The Settlement Administration Costs includes all costs and expenses of the Settlement Administrator for administering and completing this Settlement Agreement, including but not limited to fees and costs for: calculating amounts for all payments to be made based on this Settlement Agreement, printing, postage, envelopes, searches to locate current addresses for Allegedly Aggrieved Employees, any cost associated with any uncashed or undeliverable settlement checks, and to prepare any necessary tax documents, if any.

3.6. Allegedly Aggrieved Employees and LWDA. Subject to Court approval and pursuant to California Labor Code Section 2699(i), seventy-five percent (75%) of the PAGA Fund will be paid to the LWDA for penalties and twenty-five percent (25%) of the PAGA Fund will be allocated among the Allegedly Aggrieved Employees for penalties, based on his or her proportionate share of pay periods

worked during the PAGA Period. Defendant's employment records will be determinative for purposes of calculating the number of pay periods that each Allegedly Aggrieved Employee worked for Defendant during the PAGA Period and any payments under this Settlement Agreement. Defendant will provide these records to the Settlement Administrator on a confidential basis following the Court's approval of this Settlement Agreement. Payments to the settlement class shall be deemed 100% penalties and interest.

3.7. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed or withdrawn by the Court:

3.7.1. This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

3.7.2. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action.

4. DISTRIBUTION OF SETTLEMENT FUND

4.1. Notice and Distribution of PAGA Fund. Defendant will provide the Settlement Administrator with a confidential list of the names and addresses of the Allegedly Aggrieved Employees within twenty-one (21) calendar days of the Effective Date. This contact information will be provided confidentially to the Settlement Administrator only, and the Settlement Administrator will treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of such information. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement Agreement.

4.2. Defendant will provide to the Settlement Administrator the Settlement Fund to fund the Settlement within twenty-one (21) calendar days of the Effective Date.

4.3. Within fifteen (15) business days after Defendant provides the Settlement Fund to the Settlement Administrator, the Settlement Administrator will disburse the Enhancement Award, Settlement Administration Costs, Plaintiff's Counsel Payment, and payment of the PAGA Fund as detailed in this Settlement Agreement. Together with the payments of the PAGA Fund, the Settlement Administrator will provide the Notice to the Allegedly Aggrieved Employees.

4.4. Any payment and/or Notice mailed to the Allegedly Aggrieved Employees that is returned to the Settlement Administrator as non-delivered, will be sent by First Class U.S. Mail to the forwarding address provided. If no forwarding address is provided, then the Settlement Administrator will run a skip trace address verification (or other mutually agreeable method) to locate a more current address, to which the Settlement Administrator will then mail the payment and Notice. If no current address is located, the payment and Notice for that Allegedly Aggrieved Employee will be deemed undeliverable.

4.5. The Settlement Administrator will maintain a list of the postmark date for the original mailings of all settlement payments and the Notice to the Allegedly Aggrieved Employees, the postmark date of any subsequent mailings, and a list of Allegedly Aggrieved Employees who did not receive the settlement payment and Notice due to the inability to locate a valid address using the procedures described above.

4.6. All settlement checks will remain valid and negotiable for 180 days from the date of their mailing by the Settlement Administrator. After 180 days from the date of their mailing by the Settlement Administrator, any uncashed checks will be void and shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property.

4.7. No later than January 31 of the year following completion of the settlement payments, the Settlement Administrator will prepare and issue IRS Form 1099 to Plaintiff and Allegedly Aggrieved Employees who received a payment.

4.8. Tax Treatment And Tax Indemnification. Plaintiff will assume any tax obligations or consequences which may arise from the payments she receives under this Settlement Agreement. If any state or federal taxing authority contacts, investigates, or pursues any action against Plaintiff for her individual share of taxes related to any payments made under this Agreement, Plaintiff will be responsible for her own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for her share of any state or federal tax obligation related to any payments

made under this Settlement Agreement. The Parties will bear their own fees, costs, and respective tax obligations, except as otherwise provided for in this Settlement Agreement.

5. PROCESS FOR SEEKING COURT APPROVAL

5.1. Plaintiff's Counsel will prepare and file a Joint Motion for Approval of the Settlement Agreement, which they will provide to Defense Counsel before filing in order to provide Defendant an opportunity to review and comment. Defendant will not oppose the Motion for Approval of the Settlement Agreement consistent with the terms of this Settlement Agreement, but if the Parties are unable to reach agreement on language in the Motion for Approval of the Settlement Agreement, Defendant will be permitted to submit supplemental briefing to the Court.

6. RELEASED CLAIMS

6.1. As of the Effective Date, the Allegedly Aggrieved Employees (including Plaintiff), on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, hereby release, and settle any and all claims for civil penalties under PAGA alleged in the operative Complaint or that could have been alleged based on the asserted facts and legal theories raised in the operative Complaint for civil penalties under PAGA for failure to pay wages for all hours worked, failure to pay overtime wages, failure to provide meal and rest breaks or compensation in lieu thereof, failure to provide accurate, itemized wage statements, and failure to timely pay wages due at time of termination or separation (the "Released Claims"). "Released Parties" means Defendant and each and all of its present, former and future controlling persons, parents, affiliates, business partners, subsidiaries, successors-in-interest, benefit plans sponsored by such companies, shareholders, owners, officers, directors, principals, employees, agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions, predecessors, successors, and assigns. The Released Claims do not include any claims that cannot be released as a matter of law. It is the intention of the Parties that this Settlement Agreement effectively releases, precludes and bars all Released Claims by the Allegedly Aggrieved Employees and Plaintiff against the Released Parties, regardless of whether Plaintiff and/or the Allegedly Aggrieved Employees cash their settlement award checks, so long as the Settlement is administered and carried out according to this Settlement Agreement. Beyond the Settlement Fund, Defendant shall not owe any further monies to the Aggrieved Employees or to the State of California

based upon any claim asserted under PAGA as alleged in the operative Complaint or that could have been alleged based on the asserted facts and legal theories raised in the operative Complaint relating to the Allegedly Aggrieved Employees in this Action.

6.2. Waiver of Section 1542. Plaintiff waives all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding the significance of that waiver. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

It is agreed and understood by the Plaintiff that she has read all of this Settlement Agreement, including the above Civil Code section, and that she fully understands both the Settlement Agreement and the Civil Code section. Plaintiff expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

6.3. Waiver of Section 206.5. Defendant disputes that any wages are owed to Plaintiff as of the date of execution of this Settlement Agreement. The Parties agree that by signing this Settlement Agreement, the Enhancement Award and Plaintiff's proportionate share of the PAGA Fund is sufficient to compensate Plaintiff for any and all wages due to Plaintiff from Defendant, and that Labor Code section 206.5 does not apply to, and cannot invalidate this Settlement Agreement. Plaintiff further understands that Plaintiff is waiving any protection that may exist under Labor Code section 206.5, including the following provision:

“NO EMPLOYER SHALL REQUIRE THE EXECUTION OF ANY RELEASE OF ANY CLAIM OR RIGHT ON ACCOUNT OF WAGES DUE, OR TO BECOME DUE, OR MADE AS AN

**ADVANCE ON WAGES TO BE EARNED, UNLESS PAYMENT OF
SUCH WAGES HAS BEEN MADE.”**

7. MISCELLANEOUS PROVISIONS

7.1. **Mutual Full Cooperation.** Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the terms and approval of this Settlement Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement Agreement.

7.2. **No Admission.** Nothing in this Settlement Agreement constitutes an admission by Defendant of any wrongdoing or liability or of the truth of any allegation in the Action. In addition, nothing in this Settlement Agreement constitutes an admission by Defendant that the Action is/was properly brought on a representative basis other than for settlement purposes only.

7.3. **Consultation With Counsel.** Plaintiff and Defendant represent that they have carefully read and fully understand all of the provisions and effects of this Settlement Agreement, that they have consulted with counsel of their choice with respect to this Settlement Agreement, and that they are voluntarily entering into this Settlement Agreement.

7.4. **Binding Nature of the Settlement Agreement; Entire Agreement.** This Settlement Agreement may be amended or modified only by a written instrument signed by Plaintiff and Defendant. No rights under this Settlement Agreement may be waived except in writing. This Settlement Agreement and any attached Exhibits constitute the entire agreement between the Parties relating to the terms of settlement of this Action. All prior or contemporaneous agreements, understandings and statements, whether oral or written, whether express or implied, and whether by a party or its counsel, are merged in this Settlement Agreement. No oral or written representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

7.5. Headings, Titles, and/or Captions. All headings, titles, or captions contained in this Settlement Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any of its provisions.

7.6. Joint Drafting of Settlement Documents. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement Agreement as a result of a series of arm's-length negotiations. This Settlement Agreement has been drafted jointly by Plaintiff's Counsel and Defense Counsel and, therefore, any construction or interpretation of this Settlement Agreement will not be construed against any of the Parties.

7.7. No Press. The Parties, Plaintiff's Counsel, and Defense Counsel agree that none of them will issue any press release, social media post, internet or website announcement or otherwise initiate any contact with the press regarding the existence or terms of this settlement, unless ordered by the Court.

7.8. Execution of The Settlement Agreement. This Settlement Agreement may be executed in one or more counterparts and by facsimile or electronic signature. All executed copies of this Settlement Agreement (and photocopies) will have the same force and effect and will be as legally binding and enforceable as the original.

7.9. Continuing Jurisdiction of the Court. Pursuant to California Code of Civil Procedure Section 664.6 ("Section 664.6"), the Parties agree the Court will retain jurisdiction over the Parties and over this Settlement Agreement, in order to: (a) monitor and enforce compliance of this Settlement Agreement, and/or (b) resolve any disputes over this Settlement Agreement or the administration of the benefits of this Settlement Agreement.

Section 664.6. Pursuant to Section 664.6, the Parties intend that the terms of this Settlement Agreement will be fully enforceable and binding upon all Parties as the settlement of the Action, and that this Settlement Agreement will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply.

Dated: 9/23/2020

DocuSigned by:
Jennifer Jaime
By: 44F8320368DB4FD...
Plaintiff Jennifer Jaime

Dated: 9/23/20

By: M. Gomez
Defendant Ford of Ventura, Inc.