

image

Ventura Superior Court Accepted through eDelivery submitted 10-26-2021 at 12:20:42 PM

RECEIVED

VENTURA SUPERIOR COURT

10/26/21

VENTURA
SUPERIOR COURT
FILED

NOV 04 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By: AMY GATES, Deputy

1 KENNETH S. GAINES, ESQ. SBN 049045
ken@gaineslawfirm.com
2 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
3 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
4 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
5 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
6 Calabasas, CA 91301
Telephone: (818) 703-8985
7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff Carlos Carrillo, on behalf of himself and all "aggrieved employees"
9 pursuant to Labor Code § 2698 *et seq.*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF VENTURA**

13 CARLOS CARRILLO, on behalf of
14 himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

15 Plaintiffs,

16 v.

17 KIRBY OLDSMOBILE, a California
18 corporation, and DOES 1 through 10,
inclusive,

19 Defendants.

CASE NO: 56-2020-00542491-CU-OE-VTA

*Assigned for all purposes to the Hon. Kevin
DeNoce, Dept. 43*

**[PROPOSED] JUDGMENT APPROVING
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS, AND DISMISSING
ACTION WITH PREJUDICE**

Complaint Filed: June 11, 2020

21 The Court has considered the JOINT STIPULATION FOR APPROVAL OF
22 SETTLEMENT AND ENTRY OF JUDGMENT, including the settlement agreement, and the
23 record in this action ("the Litigation"). The matter having been submitted and good cause
24 appearing, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

25 1. This matter ("the Litigation") consists of a representative action by Plaintiff Carlos
26 Carrillo ("Plaintiff") against Kirby Oldsmobile ("Defendant") under the Private Attorneys General
27 Act, codified at California Labor Code section 2698 *et seq.* ("PAGA") for penalties on behalf of
28 the State of California and all non-exempt employees employed by Defendant in California from

-1-

JUDGMENT APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND
DISMISSING ACTION WITH PREJUDICE

February 5, 2019 through September 7, 2021 (the "Aggrieved Employees") asserting violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174, 1194 and 1198 premised on Defendant's alleged failure to pay all overtime wages, provide all meal and rest periods, or premium compensation in lieu thereof, timely pay wages due at separation of employment, and issue complete and accurate wage statements. Defendant denies the allegations made by Plaintiff and contends that it provided all required meal and rest breaks, paid all required overtime, and provided complete and accurate wage statements to the Aggrieved Employees.

2. After investigation, research, and informal discovery, Plaintiff and Defendant engaged in mediation before Steve Pearl, Esq. After arms-length negotiation, Plaintiff and Defendant reached a settlement, which is embodied in a written settlement agreement ("the Agreement"). The Court has reviewed the Agreement, along with the Stipulation of the Parties and the declaration of counsel for Plaintiff.

3. The Court has jurisdiction over the subject matter of the Litigation, the Plaintiff, the Aggrieved Employees, and Defendant. This Judgment shall be binding not only on the named parties to the Litigation but also on all Aggrieved Employees and the State of California, who are hereby barred by the doctrine of res judicata from re-litigating the Released Claims.

4. The Court hereby approves the terms set forth in the Agreement and finds that the Agreement is, in all respects, fair, adequate, reasonable, and just and is not arbitrary, oppressive or confiscatory and directs the Parties to effectuate the Agreement according to its terms. The Court finds that the Agreement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their respective positions. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery being provided as part of the Agreement and recognizes the significant value afforded to the Labor and Workforce Development Agency ("LWDA"), Plaintiff, and the Aggrieved Employees.

1 5. The Agreement is not an admission by Defendant, nor is this Order a finding of the
2 validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Agreement,
3 nor any document referred to herein, nor any action taken to carry out the Agreement, may be used
4 as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or
5 against Defendant.

6 6. In accordance with the Agreement, the Defendant shall make a total payment of
7 Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the "Gross Settlement Amount"). The
8 Gross Settlement Amount is the total amount to be paid by Defendant under the Agreement. Under
9 no circumstances will Defendant be obligated to pay any more under the Agreement.

10 7. The relevant time period for the Agreement is February 5, 2019 through September
11 7, 2021 ("the Settlement Period").

12 8. The Gross Settlement Amount will be paid by Defendant to a Settlement
13 Administrator. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. The
14 Settlement Administrator shall make the following payments from the Gross Settlement Amount,
15 which the Court concludes are fair and reasonable:

- 16 a. The sum of one hundred thousand dollars (\$100,000.00) to counsel for
17 Plaintiff, Gaines & Gaines, for attorneys' fees.
18 b. The sum of twelve thousand dollars (\$12,000.00) to counsel for Plaintiff,
19 Gaines & Gaines, for costs.
20 c. The sum of ten thousand dollars (\$10,000.00) to Plaintiff in exchange for a
21 general release of claims.
22 d. Up to five thousand dollars (\$5,000.00) to the Settlement Administrator for
23 its reasonable fees and expenses.

24 The Settlement Administrator shall make such payments in accordance with the procedures and
25 timing set forth in the Agreement.

26 8. The amount remaining from the Gross Settlement Amount after the payments set
27 forth in Paragraph 7 are made shall be referred to as the Net Settlement Amount. The Settlement
28

1 Administrator shall pay seventy-five (75%) percent of the Net Settlement Amount to the LWDA
 2 and twenty-five (25%) percent of the Net Settlement Amount to the Aggrieved Employees. The
 3 Settlement Administrator shall divide the twenty-five (25%) percent of the Net Settlement Amount
 4 by the number of pay periods worked by the Aggrieved Employees during the Settlement Period,
 5 which Defendant represents is three thousand three hundred and thirty-four (3,334) pay periods.
 6 Each Aggrieved Employee shall receive a payment from the Settlement Administrator equal to the
 7 resulting quotient multiplied by the number of pay periods worked by the Aggrieved Employee
 8 during the Settlement Period. The payments to the Aggrieved Employees shall not be subject to
 9 payroll taxes or income tax withholding. The Aggrieved Employees will be issued an IRS Form
 10 1099 by the Settlement Administrator. The Settlement Administrator shall make such payments in
 11 accordance with the procedures and timing set forth in the Agreement.

12 9. The Court further orders, adjudge and decrees that Upon the Effective Date and
 13 subject to Defendant's full payment of the Gross Settlement Amount, Plaintiff, on behalf of himself,
 14 his heirs, executors, and assigns, the Aggrieved Employees, the LWDA, and the State of California,
 15 fully releases and discharges Defendant, and each of its present and former affiliates, parent
 16 companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective
 17 past and present shareholders, officers, partners, directors, current and former employees, agents,
 18 attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under,
 19 by, through, or in concert with any of them (collectively, "Released Parties") from any and all
 20 claims, rights, demands, liabilities, and causes of action of every nature and description, under
 21 PAGA, which were asserted in the Complaint or which could have been asserted in the Complaint
 22 based on the facts pled therein ("Released Claims"), including, but not limited to, claims for
 23 violation of violations of Labor Code §§ 201, 202, 226(a), 226.3, 226(a), 226.7, 510, 512, 1174,
 24 1194 and 1198 that accrued during the Settlement Period.

25 16. All of the Released Claims are deemed adjudicated and extinguished with
 26 prejudice as to the Plaintiff, all of the other Aggrieved Employees, and the State of California.

27 17. The Court further finds that notice of the Agreement has been provided to the
 28

1 LWDA as required by PAGA and Labor Code section 2699, subdivision (1)(2), in particular. Any
2 request to intervene in the Litigation and/or Agreement that is filed after the date this Judgment is
3 entered shall be and hereby is deemed untimely.

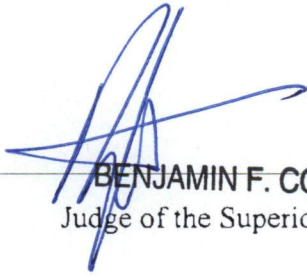
4 18. Neither the Agreement nor any act performed or document executed pursuant to or
5 in furtherance of the Agreement (a) is or may be deemed to be or may be used as an admission of,
6 or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the
7 Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or
8 evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal or
9 administrative proceeding in any court, administrative agency or other tribunal. Defendant or any
10 of the Released Parties may file the Agreement and/or the Judgment from this Litigation in any
11 other action that may be brought against it or them in order to support a defense or counterclaim
12 based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment
13 bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or
14 counterclaim.

15 22. This action is dismissed with prejudice.

16 23. This Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6,
17 over this action and the Parties and Aggrieved Employees, to the fullest extent necessary to
18 interpret, enforce and effectuate the terms and intent of the Agreement and this Judgment.

19 **IT IS SO ORDERED.**

20
21 Dated: **OCT 27 2021**, 2021

22
23
24 
25 **BENJAMIN F. COATS**
26 Judge of the Superior Court
27
28

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

____ (For messenger) my business address is:

On October 26, 2021, I served the foregoing document described **[PROPOSED] JUDGMENT APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, AND DISMISSING ACTION WITH PREJUDICE** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**Michael A. Velthoen, Esq.
Ferguson Case Orr Paterson LLP
1050 S. Kimball Rd.
Ventura, CA 93004**

X (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

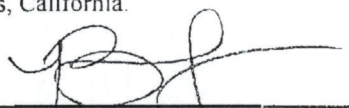
____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2021, at Calabasas, California.



BEATRIZ FRANCO