

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAESARS ENTERTAINMENT CORPORATION D/B/A  
RIO ALL-SUITES HOTEL AND CASINO,

CASE 28-CA-060841

AND

**AMICUS BRIEF OF MONTGOMERY BLAIR  
SIBLEY**

INTERNATIONAL UNION OF PAINTERS AND ALLIED  
TRADES, DISTRICT COUNCIL 15, LOCAL 159,  
AFL-CIO.

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Interested *Amici* Montgomery Blair Sibley (“Sibley”), pursuant to the Board’s August 1, 2018, “Notice and Invitation to File Briefs”, hereby files his *Amicus* Brief in support of the Board adhering to *Purple Communications*, and states as follows:

**I. SUMMARY OF ARGUMENT**

Sibley, perhaps uniquely, is singularly situated to speak to the supreme importance of maintaining the *status quo* of *Purple Communications* as he has: (i) empirical evidence, (ii) an illuminating anecdote and (iii) a detailed description of his experiences using the freedom to communicate with some 7,500 fellow employees about wage and working conditions issues due to the leveling-of-the-playing field that *Purple Communications* created. Sibley’s story, if not only read but understood, will compel the Board to adhere to the rule enunciated in *Purple Communications*. To do otherwise, would eviscerate the intent of the Thirteenth Amendment by creating a new class of 21st Century involuntarily indentured-by-electronic-isolation servants to corporate interests which, unlike their natural person counterparts, have no soul.<sup>1</sup>

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<sup>1</sup> Cf.: 81 FR 93928 (“FTC Consent Decree, Page 4: CarMax shall not: “Misrepresent the following: 1. Whether there is or is not an open recall for safety issues on any used motor

## II. BACKGROUND

CarMax Auto Superstores, Inc., (“CarMax”) is the largest used-car retailer in the United States and is a Fortune 500 company listed on the New York Stock Exchange with ticker symbol “**KMX**”. The first CarMax location opened in **September 1993**. As of **July 2018**, the company had 190 locations with some 25,000 employees. In **2017**, CarMax recorded Revenue of **\$17.12 Billion** and realized Net Income of **\$664.1 Million** on its combined operations.

Sibley was hired by CarMax in **January 2011** as a Commissioned Used Car Sales Associate at CarMax store 7206, in Montgomery County, Maryland. As part of the employment process, Sibley was required to and did sign the “CarMax Dispute Resolution Agreement”. Throughout the next five (5) years, Sibley received ever increasing responsibilities, excellent performance reviews, praise, and commendations in recognition of his good performance.

In the **Fall of 2015**, Sibley became involved in discussions with various other Commissioned Sales Associates in and around Washington, D.C. about wages and working conditions at CarMax. Eventually, these discussions led to the formation of a group dubbing themselves the “**KMX Collective**” which agreed upon a plan-of-action to see their concerns addressed.

Certain that an appeal to CarMax management would fall on deaf ears and invite

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vehicle; 2. Whether Respondent repairs used motor vehicles for open safety recalls; and Any other material fact about the safety or recall status of the used motor vehicles it advertises for sale.”); *See*: Circuit Court for the County of Goochland, Virginia, *CarMax, Inc. and CarMax Auto Superstores, Inc., vs. Montgomery Blair Sibley*, Case No.: CL16-387. (SLAPP Complaint regarding alleged defamation allegations against Sibley regarding the predatory lending practices of Carmax dismissed for lack of evidence; try to see Court-sealed internal KMX lending documents. That is where the real story is.)

retaliation against any employee-at-will who raised such concerns, the KMX Collective's first phase of that plan of action was to address the Board of Directors of CarMax imploring them to hear the wage and working concerns. Accordingly, on **January 1, 2016**, the KMX Collective sent a letter to each Member of the Board of Directors of CarMax<sup>2</sup>. A copy of that letter is attached hereto as Exhibit "A". In sum, the letter made three points:

- In **1996**, the sales commission for selling a car at CarMax was \$150. Twenty years later that commission has only risen \$10 to \$160/car – **a mere 6% increase over 20 years**. In comparison, over the same twenty year period the rate of inflation has risen at least **56%** (economists disagree on this figure, so it could be way more). So what does this mean? It means **CarMax was paying its Sales Consultants 48% less than it did 20 years ago**. That means, CarMax is essentially lowering employees' salary every day they walk into work;
- The salaries paid to CarMax C-Suite executives is over two-hundred (200) times that which CarMax Employees and Commissioned-Employees are paid. The President of CarMax, Tom Folliard, took home close to \$14,000,000 in 2015. Fifty years ago, the typical chief executive made \$20 for every \$1 a worker made. Social justice demands a significant reduction in those C-Suite salaries to free up funds for raising Employee and Commission-Employee compensation;
- Employees should have a spot on the Board of Directors. It is the 21st Century, not the 19th Century. Recognizing the importance of Employees and Commissioned Employees stakeholders to CarMax, it is time to seat Employees on the CarMax Board of Directors.

The Letter gave the Board of Directors until **May 1, 2016**, to acknowledge receipt of the **January 1, 2016** Letter. Not surprisingly, the Board of Directors of CarMax completely ignored

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<sup>2</sup> The **January 1, 2016**, letter paraphrased the language of the "Olive Branch Petition" adopted by the Second Continental Congress on **July 5, 1775**, in a final attempt to avoid a full-scale war between Great Britain and the Thirteen Colonies in America. The Petition affirmed American loyalty to Great Britain and beseeched King George III to prevent further conflict. In **August 1775**, the colonies were formally declared to be in rebellion by the Proclamation of Rebellion, and the Petition was rejected by Great Britain—even though King George had refused to read it before declaring the colonists traitors. Needless to say, a very different Declaration was issued by the Second Continental Congress on **July 4, 1776**.

the Letter.

On **April 12, 2016**, Sibley filed pursuant to the CarMax Dispute Resolution Agreement, an Arbitration Claim with CarMax which in sum and substance alleged that CarMax failed to provide a fair and equal access to sales leads to Sibley and other Commissioned Employees at the CarMax store in Montgomery County, Maryland.

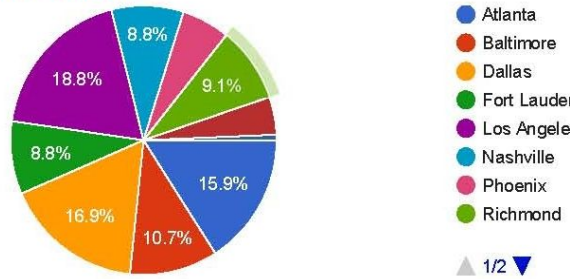
Two weeks later as promised in the **January 1, 2016**, letter to the CarMax Board and as Phase Two of the plan of the KMX Collective, on **May 1, 2016**, pursuant to federal rights secured through the National Labor Relations Act -- and in particular the NLRB's decision in *Purple Communications* -- Sibley, on behalf of the KMX Collective, **sent through the CarMax corporate email system** an email individually addressed to every CarMax Sales Associate at the then 159 CarMax stores nationwide<sup>3</sup>. The email raised wage and working condition issues for discussion and invited the 7,500 Sales Associates to respond anonymously to the KMX Collective's "*Voice of the Sales Consultant*" online survey. A copy of that email is attached as Exhibit "B". The plan was to present those concerns to the CarMax Board of Directors and Shareholders at the CarMax Annual Meeting on **June 28, 2016**.

The **May 1, 2016** email was received by every CarMax store as evidenced by the hundreds of responses Sibley received from CarMax Sales Associates to the **May 1, 2016** email. Within a few days, **over 400 responses** to the "*Voice of the Sales Consultant*" survey were tallied in a Google Forms spreadsheet. A copy of those responses are attached as Exhibit "C". A few particular responses are summarized by the following Pie Charts:

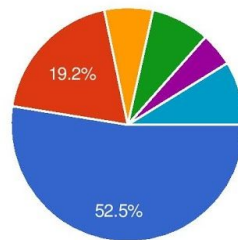
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<sup>3</sup> Sibley has a Masters Degree in Cybersecurity Policy from the University of Maryland, University College.

What Region Is Your Store In?

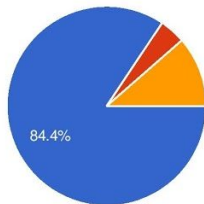


8. What was your approximate W-2 gross pay last year?



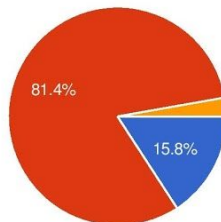
Less than \$35,000	227	52.5%
\$35,000 to \$40,000	83	19.2%
\$40,000 to \$45,000	29	6.7%
\$45,000 to \$50,000	35	8.1%
\$50,000 to \$55,000	20	4.6%
More than \$55,000	38	8.8%

11. Should CarMax agree to abide by the Termination of Employment Convention, 1982 which requires at Article 4, that the employer must have a valid reason for termination based on "the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service"?



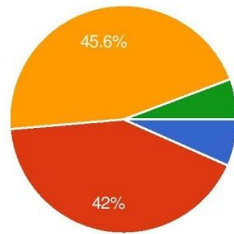
Yes	362	84.4%
No	18	4.2%
No opinion	49	11.4%

17. Do you think it is fair that we lose our sales commissions on vehicle returns within five (5) days?



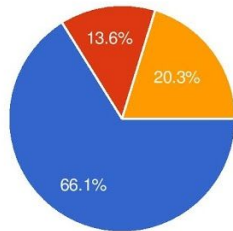
Yes	69	15.8%
No	355	81.4%
No opinion	12	2.8%

**24. If you are a Mentor, do you feel you are fairly compensated for your on-boarding activities?**



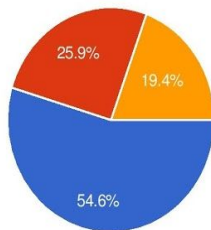
Yes	29	6.7%
No	183	42%
Not applicable	199	45.6%
No opinion	25	5.7%

**25. Should CarMax policy explicitly allow you to record conversations with managers relating to your job performance?**



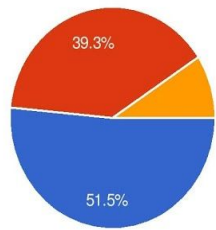
Yes	287	66.1%
No	59	13.6%
No opinion	88	20.3%

**26. If you could, would you prohibit being scheduled to open the store following a night you closed the store?**



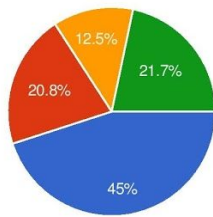
Yes	236	54.6%
No	112	25.9%
No opinion	84	19.4%

29. Do you feel that Management insures that you are given an equal opportunity for walk-in sales leads as other sales consultants?



Yes	223	51.5%
No	170	39.3%
No opinion	40	9.2%

32. Do you think CarMax should not ask Sales Consultants to sell vehicles with Takata driver frontal airbag inflator recalls that state: “could potentially rupture if the vehicle is involved in a crash where the frontal airbags are designed to deploy. In the event of an inflator rupture, metal fragments could pass through the airbag cushion material, which may result in serious injury or death to vehicle occupants”?



Yes	195	45%
No	90	20.8%
Not sure	54	12.5%
No opinion	94	21.7%

Two questions did not create a pie chart as they asked for individual responses:

- **Question #28** asked: “What would you change about scheduling? (For example: no Sundays, no 10 hour shifts, no 9 am starts after a closing shift, only one huddle/week, schedule out 30 days in advance, etc)?”
- **Question #34** asked: “What other questions would you like to see asked in the next KMX Collective questionnaire?”

In order to have a clear understanding of the importance of *Purple Communications* to the meaningful ability to exercise the NLRA right of “concerted activity”, the individual answers to Questions #28 & #34 must be read in Exhibit “C”. If read, it will be clear that a real dialogue was needed and only the ability to undertake email communications with 7,500 fellow Sales Associates spread out in 159 stores nationwide allowed the KMX Collective to initiate and

collate that dialogue as a prelude to “concerted activity”.

What happened next should come as no surprise to anyone reading this: Five days later, on **May 6, 2016**, CarMax **terminated** Sibley’s employment at CarMax in retaliation for his: (i) filing against CarMax the April 2016 an Arbitration Claim and (ii) for Sibley exercising his National Labor Relations Act rights in sending the **May 1, 2016** email. Sibley’s termination was based upon a subsequently-demonstrated as false and pretextual reason in retaliation for these actions, to wit, that Sibley had knowingly provided false information to CarMax in his employment application five years earlier that CarMax had, curiously, just noticed on **May 6, 2016**..<sup>4</sup>

As a result of Sibley’s termination, the KMX Collective faded away as the other members could not or would not step up publicly as they personally couldn’t afford to suffer termination and the subsequent costs of the SLAPP Defamation suit that CarMax vindictively filed against Sibley.

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<sup>4</sup> Sibley promptly filed a NLRA claim regarding his termination on **May 17, 2016**. The claim was docketed by the NLRB Region 5 Office in Baltimore, Maryland as *In re: CarMax Auto SuperStores, Inc.*, Case 05-CA-176501 on **May 19, 2016**. On **February 24, 2017**, without allowing Sibley to respond to the Answer of CarMax to his Claim and over Sibley’s vehement objections, Charles L. Posner, Regional Director, Region 5, entered into a Settlement Agreement with CarMax which *inter alia*: (i) required CarMax to reimburse Sibley for the wrongful termination and simultaneously stating (ii) that by ”entering into this Settlement Agreement, the Charged Party [CarMax] does not admit that it has violated the National Labor Relations Act.” A copy of that Settlement Agreement is attached as Exhibit “D”.

Sibley fully realizes that the merits of the Settlement Agreement are beyond the scope of the invitation to file this *Amici* brief and will tarry on the subject of his termination no further but to state that his entire experience with NLRB Region 5 office was appalling and a bureaucratic mockery of the very important employee rights the NLRA envisioned enshrining.



### III. THE RULE OF *PURPLE COMMUNICATIONS* MUST BE MAINTAINED BY THE BOARD

It is beyond dispute that if *Purple Communications* was not available to the KMX Collective, the ability for Sibley/KMX Collective to contact 7,500 fellow employees in 159 CarMax stores scattered nationwide would have been impossible.

And what did those responses from some 400+ CarMax Sales Associates reveal?

- Fifty two percent (52%) are making less than \$30,000/year creating a class of workers who simply cannot afford to lose their jobs (Q. #8);
- The Ability to Terminate-At-Will is a form of economic oppression which allows corporations to retaliate-without-consequence against troublesome employees (Q. #11);
- Reasonable concerns about scheduling; non-compensated work obligations and fairness of opportunity are significant concerns to a significant segment of the Sales Associate workforce at CarMax. (Q#s24, 25, 26).

Some 45 years ago, the Supreme Court clearly stated:

The place of work is a place uniquely appropriate for dissemination of views concerning the bargaining representative and the various options open to the employees. So long as the distribution is by employees to employees and so long as the in-plant solicitation is on nonworking time, banning of that solicitation might seriously dilute §7 rights. For Congress declared in §1 of the Act that it was the policy of the United States to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing."

*NLRB v. Magnavox Co. of Tennessee*, 415 U.S. 322, 326 (1974). The case study which is the CarMax narrative described above demonstrates irrefutably that if the Board strips the ability of employees access to intra-company email to engaged in "concerted activities for the purpose of . . . other mutual aid or protection," it would "seriously dilute §7 rights". Stated another way, by the *de facto* isolation of employees from each other -- particularly in the multi-store operations

such as CarMax -- if *Purple Communications* is repealed, the Board would render §7 a “right” without a meaningful way for employees to “exercise” that right.

**VI. CONCLUSION**

WHEREFORE, Sibley respectfully requests that the Board leave the holding of *Purple Communications* unchanged.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**

Dated: August 19, 2018

A handwritten signature in black ink, appearing to read "M. Blair Sibley", written over a horizontal line.

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Montgomery Blair Sibley

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served by E-mail on August 20, 2018, upon:

Participant	Address	Phone
<b>Charging Party</b>		
<i>Legal Representative</i>	1001 Marina Village Pkwy	
Caren Sencer	Ste 200	(510)337-1001
<i>Weinberg Roger &amp; Rosenfeld</i>	Alameda, CA	
<i>csencer@unioncounsel.net</i>	94501-1091	

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### Charged Party / Respondent

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DAVID DORNAK	Las Vegas, NV	(702)252-3131
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<i>ddornak@fisherphillips.com</i>		

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### Charging Party

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David Rosenfeld	STE 200	(510)337-1001
<i>Weinberg, Roger &amp; Rosenfeld,</i>	ALAMEDA, CA	
<i>PC</i>	94501-1091	
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<i>FELD LLP</i>	20036-1564	
<i>eworrell@akingump.com</i>		

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MARK RICCIARDI Las Vegas, NV

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**MONTGOMERY BLAIR SIBLEY**

*Interested Amici*

189 Chemung Street

Corning, NY 14830

(607) 301-0967

[mbsibley@privacycomplianceconsulting.com](mailto:mbsibley@privacycomplianceconsulting.com)

By:



Montgomery Blair Sibley

January 1, 2016

To: William R. Tiefel, Ronald E. Blaylock, Alan B. Colberg, Thomas J. Folliard,  
Rakesh Gangwal, Jeffrey E. Garten, Shira Goodman, W. Robert Grafton, Edgar  
H. Grubb, Marcella Shinder, Mitchell D. Steenrod, the Board of Directors of  
CarMax, Incorporated

From: The KMXCollective@yahoo.com

Most Gracious Sovereigns,

We, a Collective of Employees and Commissioned-Employees of some of stores  
4000 through and including 7956, on behalf of Ourselves and the Employees and  
Commissioned-Employees of these stores, who, though not yet aware of this  
humble Olive Branch Petition, will be gladden to learn that We have sought your  
attention to this, Our humble Petition, pray you take weighty notice of the  
following:

The Union between 12800 Tuckahoe Creek Parkway and the Employees and  
Commissioned-Employees of stores 4000 through and including 7956, and the  
energy of mild and just corporate governance, has produced benefits so  
remarkably important, and afforded such an assurance of their permanency and  
increase, that the wonder and envy of other auto retailers was excited while they  
beheld CarMax rising to a power the most extraordinary the United States had ever  
known in the auto retailing industry.

As a result, since the first CarMax used car auto superstore was opened in  
Richmond, Virginia, in September 1993, your loyal Employees and Commissioned-  
Employees, having contributed to the success of CarMax by such repeated and  
strenuous exertions as frequently procured them the distinguished verbal and  
written approbation by your Officers, doubted not but that They should be  
permitted with the rest of the stakeholders in CarMax to share in the blessings and  
the emoluments of CarMax's prosperity. They and each of Them will be rightly  
alarmed by the simple math described below that has filled – or on May 1st, 2016,  
will fill – Their minds with the most painful fears and jealousies; and to Their

inexpressible astonishment perceived the dangers of an internecine quarrel in Our judgment of a most dreadful kind.

We shall presently decline the ungrateful task of describing the irksome variety of artifices practiced by many of your Officers and Managers, the delusive pretenses, fruitless terrors, and unavailing severities, that have from time-to-time been dealt out by them in their attempts to execute the prevailing impolitic Employee and Commissioned-Employee compensation plan.

Your Officers and Managers, persevering in their measures and proceeding to enforce your policies, have compelled Us to cyber-arm in our own defense within the parameters of CarMax Way Document ID #2274 against an unfortunate response to this humble Petition, and have engaged Us in a controversy so peculiarly abhorrent to the affection of your still faithful Employees and Commissioned-Employees that when We consider whom We must oppose in this contest, and if it continues, what may be the consequences, Our own particular misfortunes are accounted by Us only as parts of Our distress.

Knowing to what incurable animosities civil discords are apt to exasperate and inflame the contending parties, We think Ourselves required by indispensable obligations to you, the Board of Directors, your Officers & Managers, to Our fellow Employees and Commissioned-Employees and to Ourselves, immediately to use all the means in Our power, not incompatible with civil behavior, for averting the impending calamities that threaten not only the annual rating by Fortune Magazine of CarMax as the 64<sup>th</sup> of 100 best companies for which to work but other unfortunately-to-be-made-public concerns regarding the behavior of CarMax towards its Employees and Commissioned-Employees and in particular the contumelies of a statutorily-authorized commissioned employee, at-will, system of employment.

Thus called upon to address the Board of Directors on affairs of such moment, We are earnestly desirous of performing this office with the utmost deference to the Board of Directors; and We therefore pray, that your magnanimity and benevolence may make the most favourable construction of Our expressions on so uncommon an occasion. Could We represent in their full force the sentiments that

agitate the minds of Us, your dutiful Employees and Commissioned-Employees, We are persuaded that the Board of Directors would ascribe any seeming deviation from reverence, and Our language, and even in Our conduct, not to any reprehensible intention but to the impossibility of reconciling the usual appearances of respect with a just attention to Our own financial preservation. Plainly, the 19<sup>th</sup> Century conception that a corporation exists solely for the benefit of their shareholders must fall to the socially-and-judicially-evolving 21<sup>st</sup> Century notion that a corporation has a role in society that is too large to be reduced to shareholder economics and indeed must now recognize a greatly enlarged moral and social duty and responsibility to care for the comfort, health and well-being of their employees as well as the communities a corporation inhabits. Upon this new fiduciary duty, the Board of Directors of CarMax can no longer operate upon the heretofore unchallenged assumption that shareholder wealth maximization is the primary purpose of CarMax.

Attached to the Board of Directors with all the devotion that principle and affection can inspire, connected with CarMax by the strongest ties that can unite humans in common endeavors, and deploring every event that tends in any degree to weaken them, We solemnly assure the Board of Directors that We most ardently desire not only that the harmony between CarMax and its Employees and Commissioned-Employees enjoyed in the 1990s may be restored but that an on-going, future concord may be established between them upon so firm a legal basis, as to perpetuate its blessings uninterrupted by any future dissensions by the present and/or succeeding Employees and Commissioned Employees; and thereby to transmit the name of each member of the Board of Directors to posterity adorned with that singular and lasting glory that has attended the memory of those illustrious personages, whose virtues, abilities and foresight have secured economic happiness to presently only the Officers, Managers and Shareholders of CarMax.

We beg leave further to assure the Board of Directors that notwithstanding the sufferings of your loyal Employees and Commissioned-Employees during the last two decades of steadily reducing compensation, Our breasts retain too tender a regard for CarMax from which We derive Our financial well-being to only request such a reconciliation as might be consistent with the dignity and the welfare of CarMax.



We therefore beseech the Board of Directors that your legal and moral authority and influence may be graciously interposed to procure us the following described relief from Our afflicting financial fears and jealousies occasioned by the antiquated compensation system presently in place, and to settle peace through every stores from 4000 through and including 7956 upon the following:

1.     Adjusting Pay-scale: In 1995, the commission for selling a car was \$150. Twenty years later, as 2016 dawns, that base commission has only risen \$10 to \$160/car – a meager 6% increase over 20 years. In comparison, according to the latest US government CPI data, over the same twenty year period the rate of inflation has risen 56%. At the other end of the spectrum, Chapwoodindex.com finds the recent actual cost of living has increased between 6% and 11% per year depending on geographic location. As such, CarMax at best is paying its commissioned employees 50% less that they did in 1995 for the same work. Moreover, CarMax is actually significantly decreasing that salary relative to inflation annually, something the annual \$15 Walmart gift card hardly addresses. Accordingly, the Board of Directors must address this grotesque inequality of pay by: (i) committing to a base salary increase commensurate with the actual annual cost of living increase each year, (ii) compensate, on a one time basis, employees based upon the number of years worked for the annual decrease in salaries they have suffered and (iii) remove the odious practice of revoking commissions duly and fully earned when customers return vehicles during the post-purchase five day period;
2.     Adjust downward C-Suite Salaries: The salaries paid to CarMax C-Suite executives according to Glassdoor.com is over two-hundred (200) times that which CarMax Employees and Commissioned-Employees are paid. Fifty years ago, the typical chief executive made \$20 for every \$1 a worker made. Social justice demands a significant reduction in those C-Suite salaries thereby freeing up funds for raising Employee and Commission-Employee compensation;
3.     Give Stakeholders a Voice: Recognizing the importance of Employees

and Commissioned-Employees stakeholders to CarMax by seating – on an initially non-voting basis – on the Board of Directors one employee per region (Atlanta, Chicago, Los Angeles, Nashville & Phoenix) selected at random from each region; and

4. B Corporation Conversion: Put to a shareholder vote whether to convert CarMax to a Delaware Benefit Corporation.

With all humility submitting to your Board of Directors' wise consideration, whether it may not be expedient for facilitating those important purposes, that your Board of Directors be pleased to direct the above mode by which this Petition of your faithful Employees and Commissioned-Employees may be improved into a happy and permanent reconciliation; thus preventing the further destruction of the financial lives of the Employees and Commissioned-Employees; and that such public statements be made by the Board of Directors on or before May 1, 2016, such that it becomes known that these entreaties have been received and are being seriously addressed: For by such arrangements as the Board of Directors' wisdom can form for addressing these concerns, We are convinced the Board of Directors would receive such satisfactory proofs of the disposition of Employees and Commissioned-Employees towards them and their resolution of these instant issues, that the wished for opportunity would soon be restored to Them, of evincing the sincerity of Their professions by every testimony of devotion becoming the most dutiful Employees and Commissioned-Employees. That you, the Board of Directors, may enjoy long and prosperous appointments, and that your decisions made in response hereto will bring honor to yourselves and happiness to their Employees and Commissioned-Employees is Our sincere and fervent prayer.

- E N D -



Monty Sibley &lt;montybsibley@gmail.com&gt;

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**EOffice Consultants: Is CarMax Screwing Us Over?**

1 message

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Monty\_B\_Sibley@carmax.com <Monty\_B\_Sibley@carmax.com>

Sun, May 1, 2016 at 9:30 AM

Bcc: montybsibley@gmail.com

CarMax Employees of America,

I'm just another CarMax employee like you. I clock in and out, day in, day out. I work long hours, sometimes late into the evening, and then back at work the next morning. I frequently work weekends, and at the whims of my fickle customers. **Last year, they made me work on New Year's Day.** And yet for all my work, for all my effort, there are times when I'm barely scratching by. Sometimes I struggle to put food on the table, my wages are so low. CarMax is screwing me over...big time! For all I've done for them, they've barely taken care of me. My salary is abysmal, my benefits are limited, my hours are absurd, and I'm tired of it...I've had enough! And I'm going out on a limb here with this email, I'm risking it all, because I'm willing to bet that you've had enough too. So if my story rings true, even just a little, then read on:

Let's take a look at the facts: In 1996, the commission for selling a car at CarMax was \$150. Twenty years later that commission has only risen \$10 to \$160/car - a mere 6% increase over 20 years! In comparison, over the same twenty year period the rate of inflation has risen at least 56% (economists disagree on this figure, so it could be way more). But 56%! That's already a HUGE NUMBER. So what does this mean? It means CarMax is paying its Sales Consultants **48% less** than it did 20 years ago. That means, CarMax is essentially lowering your salary by a few percent EVERY SINGLE YEAR. Robbing you of your livelihood...just because they can.

And if you don't think the money's there to pay you, then think again. CarMax is **LOADED!** They've got tons of money,

Exhibit "B"

their bank accounts are overflowing, it's an extremely profitable business, it's just not going in our direction. Just take a look at the salaries of the C-Suite Executives that run CarMax. In the past 10 years (not even 20) C-Suite Executives at CarMax have seen their salaries increase over 200%. Yes, you read that right. 200%! Don't kid yourselves, folks. The money is there...loads of it...we're just not seeing any of it. It all goes straight to the top. The game is rigged. There's no way for you to win in this system.

Another fun fact: You know Tom Folliard? The guy who runs this company? He took home \$14,000,000 last year. Let that sink in.

So there are the stats, there's my story. I'm putting it all on the line here, folks, because I believe we've all had enough. I believe it's time for us to make a change. I believe it's time for us to have a revolution...what do you believe? Look around, ask yourself: Is CarMax Screwing Us Over? You tell me.

Do you want to make your voice heard? Do you want to change this screwed up system? Then take the first step! Respond anonymously to our "[Voice of the Sales Consultant](#)" survey. Together we can make a difference. If we get enough responses we will take your concerns to the CarMax Board of Directors and Shareholders at their Annual Meeting on June 28, 2016.

Overwhelm them with numbers and they'll have no choice but to share the wealth!

The second step? Visit [KMXCollective.com](http://KMXCollective.com) and learn more about who we are and what we are trying to accomplish.

Complete the forms online and give us your personal email information...because the truth is, this email is probably going to get disconnected as soon as CarMax figures out what's going on. And the only way we can win is if we can coordinate. It's all up to you, my fellow employees. I can't do this alone. Let's change the way the game is played.

Or do nothing and allow CarMax to incrementally lower your wages each and every day you work. It's up to you.

Yours,

Monty Sibley

*This email is sent pursuant to: (i) Our rights under Sec. 7 of the [National Labor Relations Act](#) which states: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities" and (ii) the recent decision of the NLRB Board in [Purple Communications](#).*

montybsibley@gmail.com

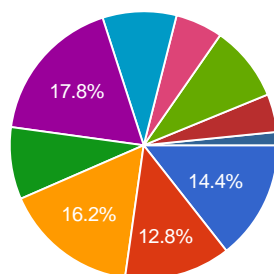
[Edit this form](#)

# 437 responses

[View all responses](#)[Publish analytics](#)

## Summary

### 1. What Region Is Your Store In?



Atlanta	63	14.4%
Baltimore	56	12.8%
Dallas	71	16.2%
Fort Lauderdale	38	8.7%
Los Angeles	78	17.8%
Nashville	39	8.9%
Phoenix	25	5.7%
Richmond	40	9.2%
Sacramento	20	4.6%
Small Format	7	1.6%

### 2. What Store # Do You Work At?

7111

7126

7104

7103

7177

7132

7195

Exhibit "C"

7810

7114

7206

7190

7663

7173

7118

Burbank

7198

6018

7110

7279

7120

7654

7243

7157

7294

7109

6024

7202

7113

7187

7210

7186

7150

7653

7262

7101

7233

7257

6045

Duarte

7268

6054

PTM

7175

6042

Boynton Beach

North Attleboro

7159

7260

laurel

7117

7192

7281

7291

7286

Orlando

6040

7265

7258

7203

7295

7181

Austin

7149



Kearny Mesa

7154

Burbank CA

Ellicott City

6021

7108

7167

Frederick

7148

Norcross

Norcross 7104

Miami international

7283

7197

Hartford 7286

Potomac Mills, VA

7183

Cincinnati

7174

7218 memphis

Woodbridge, Virginia

7218

Elkridge

Jackson

7278

7267

riverside

7129

southlake

Hemderon #7157

Buena Park

1234

7129-buena park

BP

Irvine

7221

7274

Counsultant

6000

Augusta

7816

7196

1111

2074

Modesto

Chatt

6037

Miami Lakes

6031 Buford

7271

lithia springs

7152

Houston North

7282

Dulles

6081

Austin North

7291/Fredericksburg

7285

7241

7247

Irvine

7231

7248

7171

Rivergate

ontario

7244

7946

7114 houston north

7297

6025

Burbank 7126

Katy 7295

6027

7190 - Austin South

Gaithersburg

Arlington

Kansas City

henderson nv

7194

Atlanta stores

baton rouge

LAX

6031

Gastonia

So. Jordan Utah

6014

7284

irvine

7653 kearny mesa

Ft lauderdale

Norcross

6001

6113

FLORIDA

Norcross-7104

Irving

gulf

6013

clackamas

wichita

Mechanicsburg

#7806 Carmax Laurel Toyota

dont know

Hartford CT

7806

Frederick

7106

6032

Norwood

7165

7662

7121

7136

7105

Rochester New york

chattanooga

TBD

Newport news

### 3. How Many Years Have You Been Employed At CarMax?

1

2

3

4

5

7

1.5

6

10

1 year

6 months

2.5

9

2 years

8

11

13

17

5 months

Almost 2

4 years

7 months

5 years

10 years

3 years

15

5+

3.5

>1

almost a year

6 months

1.3 years

1 Year

Less than 1

Almost 3

18 years

8+

1yr

0

1.3years

1 1/2

less then 1 year

6+

1 and some months

Less than a year

4 Total. I currently do not work for CarMax

3+

18

1 plus

7 years

Many

2 years 4 months

since 2012

6 years

3yrs

3.6

2 1/2

Over 3 years

over 3

One

2 years and half

13months

14

3 months

1

0.5

4+

Three

3 years

6.5

8 years

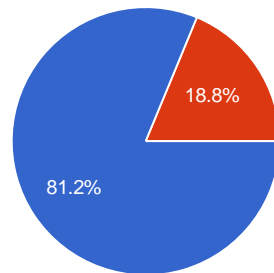
less that 1

1.4

1 and a half

5 years  
4 months  
Less than one  
3 monts  
4.5  
3 yr 7m  
9 months  
8.5  
less than 1  
13.5  
10+  
2 months  
year and a half  
1 +  
6 mo.  
12  
7159  
Over 4  
TBD

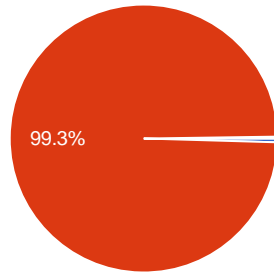
#### 4. Are you a Full time or Part time employee?



Full Time	<b>355</b>	81.2%
Part Time	<b>82</b>	18.8%



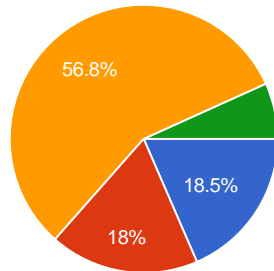
### 5. What is the CarMax Time Card System Called?



PayChex	2	0.5%
Kronos	432	99.3%
Pyramid Time System	0	0%
Capterra	0	0%
Other	1	0.2%

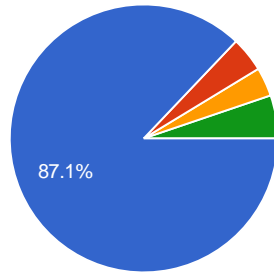
## Wage Questions

### 6. What was CarMax CEO Tom Folliard's Salary in 2003?

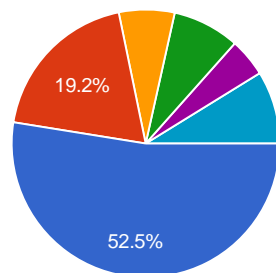


\$1,500,000	74	18.5%
\$3,500,000	72	18%
\$600,000	227	56.8%
\$350,000	27	6.8%

### 7. What was CarMax CEO Tom Folliard's Salary in 2015?

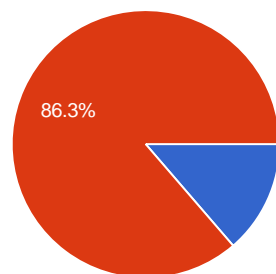


\$11,700,000	351	87.1%
\$9,700,000	17	4.2%
\$7,700,000	14	3.5%
\$5,500,000	21	5.2%

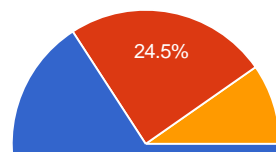
**8. What was your approximate W-2 gross pay last year?**

Less than \$35,000	<b>227</b>	52.5%
\$35,000 to \$40,000	<b>83</b>	19.2%
\$40,000 to \$45,000	<b>29</b>	6.7%
\$45,000 to \$50,000	<b>35</b>	8.1%
\$50,000 to \$55,000	<b>20</b>	4.6%
More than \$55,000	<b>38</b>	8.8%

**(Tom's salary was \$11,600,000 in 2015 up from \$600,000 in 2003.)**

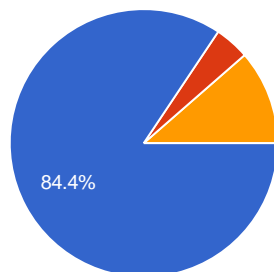
**9. Was your answer to the above question an amount sufficient for you to meet the ordinary and normal expenses of a family in your situation?**

Yes	<b>59</b>	13.7%
No	<b>372</b>	86.3%

**Working Conditions****10. CarMax presently has the "right" to terminate employment "without cause", that is to say for any or no reason. Do you believe that employees should only be terminated "for cause"?**

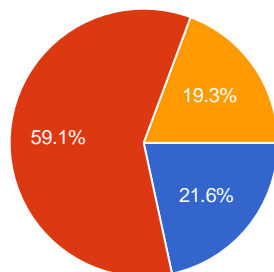
Yes	<b>285</b>	65.8%
No	<b>106</b>	24.5%
No Opinion	<b>42</b>	9.7%

**11. Should CarMax agree to abide by the Termination of Employment Convention, 1982 which requires at Article 4, that the employer must have a valid reason for termination based on "the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service"?**



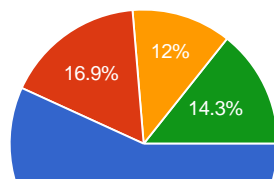
Yes	362	84.4%
No	18	4.2%
No opinion	49	11.4%

**12. Do you think that CarMax (falling to #86 this year) is "one of the best 100 companies to work for?"**



Yes	94	21.6%
No	257	59.1%
No opinion	84	19.3%

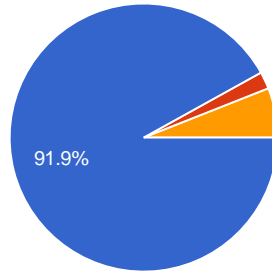
**13. Do you believe that CarMax should be closed on Sundays to allow the full observance of the Christian Sabbath and drastically improve the quality of life of CarMax employees?**



Yes, completely closed	246	56.8%
No, stay open 11-7 on Sunday	73	16.9%
No, stay open 11-5 on Sunday	52	12%

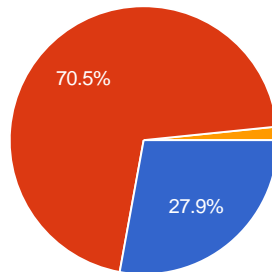
No opinion    **62**    14.3%

**14. Would you welcome a Fair Trade International (<http://www.fairtrade.net/>) audit of CarMax wages to see if they meet Living Wage benchmarks?**



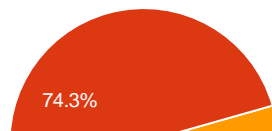
Yes	<b>399</b>	91.9%
No	<b>9</b>	2.1%
No opinion	<b>26</b>	6%

**15. Were you aware that if CarMax raised the commission on a vehicle sale between 1996 and 2016 to account for inflation the (Total inflation from January 1996 to January 2016 was 53.44%) the commission on a vehicle sale today would not be \$160 but \$245.51? ([http://inflationdata.com/Inflation/Inflation\\_Calculators/Cumulative\\_Inflation\\_Calculator.aspx](http://inflationdata.com/Inflation/Inflation_Calculators/Cumulative_Inflation_Calculator.aspx))**



Yes	<b>121</b>	27.9%
No	<b>306</b>	70.5%
No opinion	<b>7</b>	1.6%

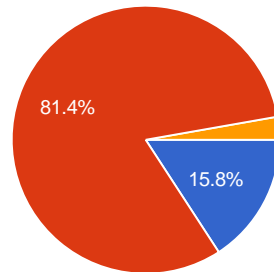
**16. Are you aware that, adjusted for inflation, CarMax is paying \$86.40 in 1996 dollars as vehicle sale commission in 2016?**



Yes	<b>92</b>	21.3%
No	<b>321</b>	74.3%

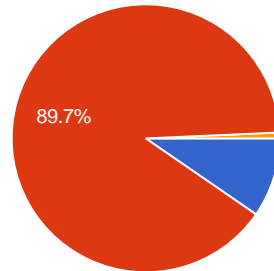
No opinion      **19**      4.4%

**17. Do you think it is fair that we lose our sales commissions on vehicle returns within five (5) days?**



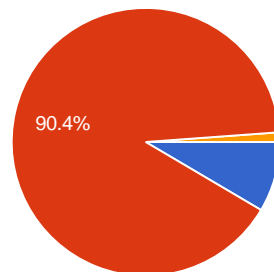
Yes      **69**      15.8%  
No      **355**      81.4%  
No opinion      **12**      2.8%

**18. Do you think it is fair that we lose our sales commission on MaxCar returns within 90 days?**



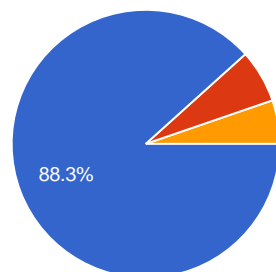
Yes      **42**      9.6%  
No      **392**      89.7%  
No opinion      **3**      0.7%

**19. Do you think it is fair that we do not get the \$50 sales commissions on vehicle trade-ins?**



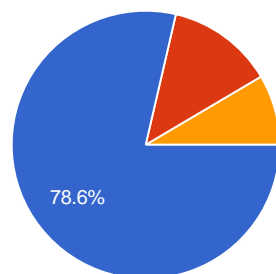
Yes      **37**      8.5%  
No      **394**      90.4%  
No opinion      **5**      1.1%

**20. Do you wish you had access to Carmax e-mail, ccm and order entry from your home/smartphone so you could provide better customer service and preserve full commissions rather than having to split commissions?**



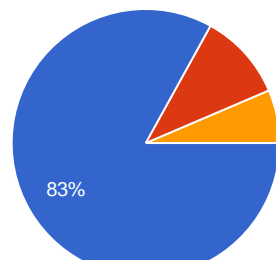
Yes	<b>386</b>	88.3%
No	<b>28</b>	6.4%
No opinion	<b>23</b>	5.3%

**21. Do you wish your cellphone number was printed on your CarMax business card so you could provide better customer service?**



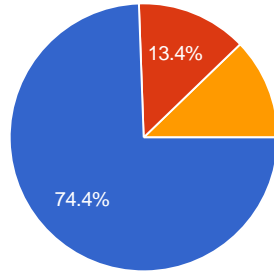
Yes	<b>342</b>	78.6%
No	<b>56</b>	12.9%
No opinion	<b>37</b>	8.5%

**22. Do you think that if you are the "person-in-the-middle" of a commission that you should nonetheless receive a commission of \$50 as you were rendering excellent customer service but not being compensated for that service?**



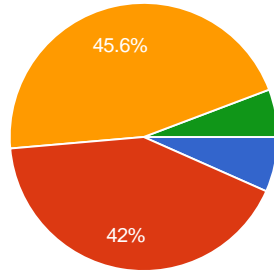
Yes	<b>362</b>	83%
No	<b>46</b>	10.6%
No opinion	<b>28</b>	6.4%

**23. Should CarMax alert customers that sales consultants are solely straight-commissioned employees by providing a printed brochure and a prominent carmax.com webpage description on that subject to each customer to increase the level of respect for our time and efforts?**



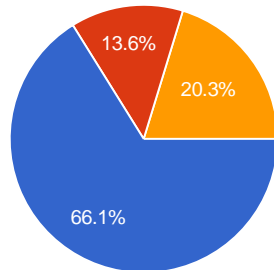
Yes	323	74.4%
No	58	13.4%
No opinion	53	12.2%

**24. If you are a Mentor, do you feel you are fairly compensated for your on-boarding activities?**



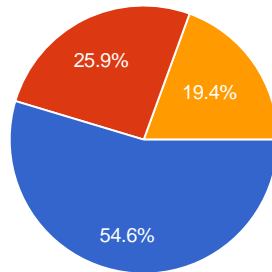
Yes	29	6.7%
No	183	42%
Not applicable	199	45.6%
No opinion	25	5.7%

**25. Should CarMax policy explicitly allow you to record conversations with managers relating to your job performance?**



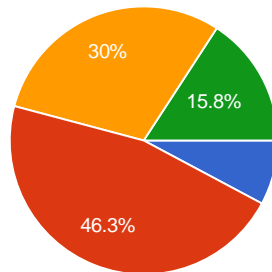
Yes	287	66.1%
No	59	13.6%
No opinion	88	20.3%

**26. If you could, would you prohibit being scheduled to open the store following a night you closed the store?**



Yes	236	54.6%
No	112	25.9%
No opinion	84	19.4%

**27. How many hours/week are you assigned work that takes you from income producing activities? (Huddles, Lot Merchandising, "Associate Development Activities", etc.)**



Less than 1 hour	34	7.8%
1 - 3 hours	202	46.3%
3-6 hours	131	30%
More than 6 hours	69	15.8%

**28. What would you change about scheduling? (For example: no Sundays, no 10 hour shifts, no 9 am starts after a closing shift, only one huddle/week, schedule out 30 days in advance, etc)**

No Sundays

nothing

no sundays

No Sunday's

All of the above

No Sundays

No sundays



N/A

Schedule out 30 days in advance

no sundays

No 9am after closing

none

no 9 am starts after a closing shift,

No 10 hour shifts

no 10 hour shifts

no 9 am starts after a closing shift

all of the above

No opening shifts after a closing shift, Sundays Closed, no more 10 hour shifts

no more 11 hour shifts

Nothing

no clopen

4 day work weeks.

no 9am starts after closing, work/life balance shifts:ie. 9-5, 10-6, 11-7, 12-8, 1-9

mandatory e office even if you are in the middle of selling a car.

One huddle a week

I'm part time, so they've been quite flexible with my scheduling.

1 huddle a month... im not a retard i don't need 4 a month

paid huddles, no sundays, no 10 hour shifts. (I do have a life outside of these walls)

no sundays .huddle paid .

All of the above

one huddle a week and keeping the schedule 6 weeks ahead

no sundays, either morning or close but employee decides if full time set schedule

NO Sundays

No 9 am starts after working a late shift

presidents club associates get to work whenever they want and new employees get the worst shifts

30 day schedule, no close then open shifts some of us live almost an hour away from work, if you have been to the huddle once for the week you dont have to go again.

Shorter Sundays

No sundays. Fair hours.

None. Regular Scheduling teams ensure fairness and consistency

no sundays, schedule out as far in advance as possible, one huddly a wk.

No Sunday

Schedule out 30 days in advance.

No Sundays, and No mandatory meetings (call reviews, file reviews)

No rotating scheduling

No Sunday , being able to finish a deal even if e office is scheduled while selling the car

No CRR at 8am

Should be paid an hourly rate for any hours that you cannot sell cars that you are forced to work

1 huddle per month

two days off consecutive

Would prefer not to open after closing the previous day. As well as not closing the day before your 3 day weekend.

I would change the opening after closing, less huddles, no 2 hour file reviews, have a full time eoffice staff, and no Sundays so I'm able to go to Church.

Hourly pay for huddles

Sunday Hours start at 12:30

allow mentors to make our own schedule, option to go home if sales are met personally.( meaning above commission, above store/region average in units)

Sunday's off

No early shift when preceded by a closing shift!

all of the above, also more flexibility. If you come in early/stay late or come in on a day off.... there is never a chance to be allowed to go home early on another day.

More money

one huddle a week

All of the above listed in the examples.

No Sunday's and no clopens. Paid time for mandatory training.

Schedule out 30 days in advance

no opinion

if kronos can include a shift release and pickup means in the system, mobile app tooo

No 9am shifts

no Sundays

Two days in a row off guaranteed.

Nothing. I love my schedule.

(1)Only have to attend 1 huddle a week; (2) get my damn schedule a month ahead of time instead of 2 days before the pay period is going to end

No opening after closing, 30 minutes huddles, faster computers.

2 hour eoffice shift on Sundays instead of 4 hours

Presidents Club make their own schedules without barriers like you need to work at least one Sunday per month.

all late shifts consistently if that's what I prefer

Store hours for all Carmax stores should be in line with one another. This means no Sundays, as many stores do not operate on Sundays while others do

30 days in advance

Less huddles no 10 hour shifts

No sundays.

Hi

no Sundays, no 10 hours shifts, no opening after closing

1 weekend off of month, closed on Sunday, no 10 hour shifts,only 1 huddle per week

Each one mentioned

No lot merchandising, huddles, associate development such as ID and CRR unless paid an hourly pay.

No sunday

No opening after closing. Eight hour shifts

Closing then having to open the next day

No sundays. Pay for attending huddles

5 hour lunch rule taken away

only one huddle/week

No Sundays, only one hurdle/week, no 10 hour shifts

no Sundays, no 10 hour shifts, no 9 am starts after a closing shift, only one huddle/week, schedule out 30 days in advance

no 9AM shift after closing, only one huddle, no 10 hours shift

All good ideas. Schedule should be tied to when e-office appt can be scheduled to each employee. We waste a lot of time calling customers back to let them know the appointment they made online is not possible for us. It should be links like Google calendars with lockout times and dates with the person logged in is not available

Is is fine, quit stirring up trouble just because you are not successful.

8 hour total shifts. not 9 or more

no pay no business on Sundays micro managing

i like it

You only have to attend the same huddle 1 time, they should only last 30 minutes max.

No 10 hour shifts, holding us late to put away cars, eoffices that we don't get paid for.

have it in a timely manor less last minutes changes

all above

No Sundays, 1 weekly huddle

1 out of every 6 Saturdays I'm scheduled off, should be at least 1 of every 4.

Possible four-day weeks

Option to work every other sundays

Huddle should be where we talk about driving sales not talking about the same BS for over a month.

9 AM mandatory is awful, 10 hour shifts are awful, meetings are cutting into money making time. Micro management of meetings is overbearing and ends up costing me and the company money.

One huddle a week, and more weekends off

1 huddle. reduce kmxu videotape require. Increase holiday observation. Improve benefit support from corporate

Paid huddles(clock in as training) no mandatory merchandising.

paid huddles and merchandising

No ten hour shifts, no 9:00am starts after a closing shift

schedule out 30 days in advance

No 9 am starts after closing

No 9 am after closing the night before, schedule out at least 30 days, eoffice schedule out at least 1 week in advance.

nothing. President's club allows you to set a pretty liberal schedule.

one huddle a week. If you've already attended a huddle, no 9am shift the rest of the week required.

As a President Club I create my schedule. Prior it sucked

Fixed schedule so you can plan. Rotating schedule sucks...and gets changed

None

0

shouldn't have to work an extra hour to account for lunch when most of the time i don't take lunch break

Huddles if mandatory should be a paid activity. Lock ups and merchandising are inventory functions and should be performed by them.

Other than a mandatory huddle sales should be scheduled 15 minutes prior to open (9:45).

if you closed dont open the next day literally cant see my family

One huddle a month

30 day schedule

All the above

NA

Closed Sundays

1. No Sunday work, 2. No closing than opening

No store open on Sunday

No 9am start

Pay me for the huddles again! CarMax paid \$12 an hour for my time, Kronos came into the store then we stopped getting paid for trainings and inventory movement.

No closing shifts on back to back Saturdays

Max 8 hrs on any shift

We don't work Sunday's, but I would like to be allowed to work 35 hours per week and still get benefits. I believe benefits should also be available to part time employees.

Few store are close on Sunday - should remain close through out the CarMax. Yes, no 10 Hour Shift (sometime it spread over to more than 12 hours, due to closing difficulties such as supporting documents from customers). Yes, no 9 am shift except the huddle day (once a week) and following day of closing night.

No 8 AM starts after closing shift

No 9 am start

Paid average hourly rate for huddles, merchandising, and other tasks given through out the day

One huddle

3 shifts on Sat: 8:30-5:30; 10-7; 12-9. Full-timers off at 6 Sundays

No Sundays. Schedule available for 30 days in advance on a rolling basis.

Voluntary eoffice shifts

No open after close

No Sundays, no ten hour shifts

Pay for snow removal. We have been getting ripped off forever. I was told I had to do 4 hrs to get paid. It's actually 1.5 hrs. And I don't HAVE to do it at all.

no 10 hr shifts

no sundays , no too many e office shifts, CarMax should hire a team only for e office.

No extra hour for "tax season"

Sick pay

similar shifts, not all varying every day.

President Club members allowed to schedule <8 hour shifts as long as they meet the 45 hr weekly schedule.

Saturday and Sundays

I'm happy with my schedule and my store is great with time off requests

No Sunday shifts. Set closers and openers.

No eoffice shifts splitting my shift, no sundays

Schedule for sure. My store already has Sundays off but I can't request a day off unless it's a month and a half away. Crazy. And if we close, not to open.

Paid vacations for part time associates

Sunday closed only e office shift

2 huddle a week

No 9am starts after closing

all the above ...numerous.

Should just work 8 hour shifts.

One huddle per week. No 3 day weekends unless requested.

no lock up after 9 oclock .. no opening the day after closing

monthly huddles or bi weekly. huddles.

getting rid of the longer 11-9 shifts and the 8:30-6 shifts

1 huddle/week, option out of eOffice shift

Nothing

Make my own schedule

Not working every weekend and only getting 1 Saturday off every 6 weeks.

No 10 hour shifts. lunch on MY time. work every other Saturday

huddles only for new associates, closed on Sunday, and off on Holidays (all) and close at 8pm at night

Huddle kept to no more than 40 minutes

if you close you do not have to open next day

N/a

I'm ok with scheduling

All of the above would be a great start.

No Sunday's

These are great ideas

schedule only 30 days in advance

No Sunday's, no 10 hour shifts

i would change the possibility of 9 or 10 hour shifts , i feel they are strenuous and at time we do not get a lunch because of the volume of customers and sometimes go a whole day without food which causes headaches , stomach pains and is not healthy for the body.

Closed on Sunday, only 8 hour shift

NO SUNDAYS, one 9am huddle a week, no 6:30 pm schedule.

No 10 hour

1 Saturday off every so often

No Sunday's..

.

no sudden changes in shifts without notice

My store currently only requires one huddle a week. It would be better if we had a choice to not work an opening shift right after a closing shift.

no problems

All of the above except closing Sundays. We should continue to be open on Sundays.

No Sunday's

Compass Meetings are the BIGGEST WASTE of time. I'm REQUIRED to attend 5:00 p.m. Compass Meetings when I'm AVAILABLE from 6:00 p.m. I am forced to make SPECIAL ARRANGEMENTS at my FULL TIME job in order to attend.

getting paid for huddles or training

sales consultants should have more control over their schedule without having to go through a tier system, also I would change the fact that we are all full commission.

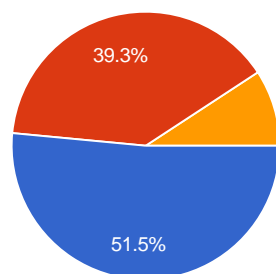
ONE HUDDLE A WEEK STOP THE PRETEND NEW TRAINING

no 10 hours shift and no sundays!!!!

not having to work at least 4 days if you are part time so you can do 2 long shifts instead of multiple 3 hour shift

limit on e-office shifts

**29. Do you feel that Management insures that you are given an equal opportunity for walk-in sales leads as other sales consultants?**



Yes	223	51.5%
No	170	39.3%
No opinion	40	9.2%

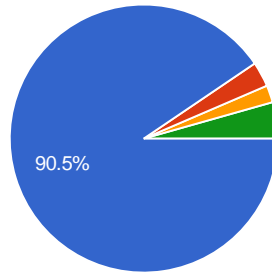
**30. Do you believe you know what CarMax surveillance policies and practices are? (i.e., employment of computer-use monitoring, predictive modelling algorithms, downloading of your smart phone data when connected to a CarMax Computer to charge, etc.)**





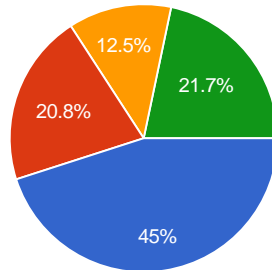
Yes	<b>41</b>	9.4%
No	<b>266</b>	61.1%
Not sure	<b>110</b>	25.3%
No opinion	<b>18</b>	4.1%

**31. Do you think that CarMax should make a full disclosure to each employee of such surveillance activities?**



Yes	<b>392</b>	90.5%
No	<b>13</b>	3%
Not sure	<b>9</b>	2.1%
No opinion	<b>19</b>	4.4%

**32. Do you think CarMax should not ask Sales Consultants to sell vehicles with Takata driver frontal airbag inflator recalls that state: “could potentially rupture if the vehicle is involved in a crash where the frontal airbags are designed to deploy. In the event of an inflator rupture, metal fragments could pass through the airbag cushion material, which may result in serious injury or death to vehicle occupants”?**



Yes	<b>195</b>	45%
No	<b>90</b>	20.8%
Not sure	<b>54</b>	12.5%
No opinion	<b>94</b>	21.7%

**33. Would you welcome an “employees only” meeting once a month to discuss employment issues?**



Yes	<b>347</b>	80.3%
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No	<b>36</b>	8.3%
Not sure	<b>30</b>	6.9%
No opinon	<b>19</b>	4.4%

### 34. What other questions would you like to see asked in the next KMX Collective questionnaire?

none

Na

You did a good job can't think of anything else right now.

Wheres the money going?

Do you believe you are treated like a responsible conscientious adult when you are a few minutes late after coming in to work days off, work 12 hours shifts to provide great customer service only to be "coached", written up and warned about possible termination of employment due to being tardy 3x? Or, having the printed schedule changed and you are written up for working the shift you thought you were assigned instead of the unknown new assigned shift?

The VOC and the Numbers game Carmax plays on employees. If you see too many customers your numbers go down and your a bad employee. Ups list system inequality. Sales Consultants filtering customers at the front desk in front of managers.

More questions about our pay. When I sell a vehicle for \$50,000 and I make ~0.5% on commission something isn't right. When I work for 26 hours a week and make \$180... something isn't right.

Stop playing us like children. We are not idiots.

None

KPM metrics and opportunities for advancement not properly aligned particularly when the metrics are wrong.

Why are all sales managers ALL white male men in the Woodbridge location?

did you receive any negative repercussions from sending this email?

Have you sold cars at a traditional dealership before? I have and it makes a difference.

Wage take-back. Is it lawful?

Can't think of any right now

None at this time.

carmax make \$4-7K per car? why price value max cars way above cost KBB/credit unions?

Are you treated differently if your sales are not up to par?

Questions for all departments.

Office shifts cutting into a deal, and then managers want you to give up half your money so you can answer phones

raise pay

Wages

How you are spoken to from management. Be spoken to as a professional not like a kid.

Why hasn't the basic commission amount increased adequately based on the growth of the company?

This is one of the most amazing things I've ever seen. You've hit the nail on the head in every single area. Thank you, Thank you, Thank you!

CarMax profit margins on vehicles sold compared to the commission paid to the sales consultant.

Getting paid properly for meeting times/required huddles/required file reviews. Anything that pulls you off the sales floor for more than 30 minutes away from active selling time should be clocked in as an hourly wage on top of earnings.

Compensation

Overall pay is below industry average

no opinion

Is everyone's floor as flooded with consultants as ours? Way over staffed.

address time off vs vacation days

None. This is a great place to work. Leave your turmoil at home and quit creating a hostile work environment for the rest of us who do exceptionally well selling cars for this great company. Do your job better and you will make more money. Quit closing at 4% and you can provide for your families.

1. What exactly does an LGM do because our LGM is never at our store?

management control of OAS leads to individuals in office, not fairly distributed

The subsidy policy is horrible they take back the money even though you were at work it's not your fault if you didn't make a sale you was at work trying and I don't think that's fair.

Keep up the good work guys!!!!!!!

lazy managers, favoritism

How do I not make a commission on sales that are closed with really high APR? There should be compensation for financing.

Do you understand what sort of behaviors are to be documented in your ADF?

Ranking of sales managers which is related to them with feedback as to why they are viewed negatively.

Have they even considered a pay increase within the last few years?

We need more money per car sale not per max care! We also need a salary that covers for meetings and other things we do that do not make car sales. Training should be paid anytime you are doing required training. Not just when you start with the company.

Lax location gets a lot of customers on a regular bases high on some kind of drug how is that a safe environment

Can we get compensation to use our cell phone?

I would like to see how Carmax compares to its competitors

The blatant sexism needs to be addressed. Always calling women to handle the angry customers instead of calling us with there's someone wanting to buy a car. It's annoying.

You really need to focus on how you can get better, not what can be handed out to you. Don't take your troubles to everyone else.

I have no questions as of now. Everything in this survey is pretty straight forward nothing.

I would like to sign my rights for the 5 hour law, there are ways around this, but Carmax is so closed minded. Carmax offered Health Benefits are extremely expensive! The yearly Compass questions/answers are to benefit CarMax, they DON'T want the truth. NEVER should you have to be on an appraisal for up to 1 1/2 hours because the buyers schedule poorly, they are training a new buyer in training, or because a customer wants an appraisal for their insurance company, lawyer or just to see the value. Buyers are paid salary and are paid no matter how long the process takes, what about us? We should not have to be the face of low ball appraisals, we aren't the one putting the value on the vehicle! VOC is a completely misleading and a joke. Paying back subsidy is stealing food from our familys, it WRONG and should be illegal! Lastly management should never show favoritism, creating teams and competition against each other is wrong, we should ALL be a team!!

This is more of a statement I was once talking to a manager about eoffice. He told me that in other locations they tried call centers for eoffice and then they would pass the lead on to the sales associates. But they stopped that because they had to pay the call center worker hourly and they DONT HAVE TO PAY US. we sit there for 3 hours and yes we get leads but I've also had to split a deal because I of course can't skip Eoffice. I believe we deserve a raise but I also believe we need some sort of hourly wage that is not the subsidy that gets taken from our next paycheck.

NOT CHANGING THE POLICY BASED ON THE EMPLOYEE ASKING/TO MANY LOOP WHOLES AND GRAY AREAS/ CLEAR SPLIT POLICY/ONLY 2 PEOPLE TO A DEAL SO NO EMPLOYEE GETS MIDDLE OUT. BEING ABLE TO GO BACK ON THE UPS LIST WHEN A CUSTOMER IS ONLY BROWSING WITH NO INTENTION TO PURCHASE.

Why associates owe CarMax money when the company made an error calculating wages in the first place.

Would you like to sit down with regional management once a quarter about your stores management performance?

Change pay plan to a base pay plus commission if th flat rate does not change.

If I come into work five min late. I'm late and I will be written up for a job i don't get paid hourly for, but there more then happy if i come in early and stay late to get them there buget. Also we have got a new LGM and every since he has been here I have seen him bully his Managers and the sales People and everyone who workes here. Has let go many workers some with out any reason. and if we go to HR it gets turned on us like we did something wrong. and I seen where someone got a coaching for going over the LGM head to HR.

They don't pay commissions, they pay piece work.

What about a \$10 or \$15 commission just to do an appraisal for a customer, regardless of if they sell it or not. Just for taking the time to sit with That customer.

I think this one was thorough and well though out.

Sick days (hours) allocation. Proportional benefits increase. requirement for store management to have community involvement should we welcome union?

NO QUESTIONS.....WANT REPRESENTATION

Why is it allowed for some sale consultants to come in on there days off unless they have an appointment because it take away from the sales consultant who is scheduled. It take away the chances of selling a vehicle. It seems that CARMAX doesn't care about the consultant and there family, only how many vehicles are sold. There are sales consultants that will come in open to close 7 days a week, maybe they have no lives at home but the rest of us do.

Do you think Sales Consultants should do appraisals?

How many people that are in this "KMX Collective" are not in President's Club. Maybe I won't see you in Vegas.

Pay should be calculated by day versus pay period. If you don't sell a car during a 8-10 hour shift you don't get paid minimum wage for that day. It gets blended based on your two week commission. So you have a good day and then you may not earn any pay for the next several days thus working for FREE. Also should be paid for attached appraisal. You actually do more work.

You should get at least minimum wage for days that you don't cover draw. It's not fair that you can sell a couple cars great day and work additional days for free because calculated on two week pay period. Also not fair to not be paid for attached sale appraisal.

Your language completely derails any validity your argument might have.

n/a

go back to the old retirement system

too many to write

Would we as sales consultants become a part of the team

What happen to our pension plan that I signed up for when I started. Bring it back! If CarMax wants true devotion, and dedication let me know you have my back!

Having to do lockups and we are not compensated for that time

You covered it

Do you think management cares that most sales consultants don't stay with the company very long? Is it the Carmax culture to hire new consultants who stay for a short period of time instead of investing in the associates who stay and actually making Carmax a great place to work? Why is the turn over rate so high? Why doesn't management care?

Fair treatment with respect and dignity.

You need to get CarMax pay history correct. It weakens your argument when your data is flawed.

Concentrate on the pay. It is way too low.

Paying for uniforms, more president club perks and more steak dinners

Is it fair that corporate employees get paid sick days at their normal pay rate but salespeople are paid a greatly reduced rate of \$7.75 per hour instead of their average earnings, in some cases that means salespeople get paid 75% less per sick day than our corporate office counterparts. Clearly Carmax views Salespeople as second class employees. This is very counterproductive and does not improve the bottom line as sick salespeople come to work and infect coworkers and customers. Was it fair for Carmax to raise Maxcare prices without increasing the commission, decreasing the salesperson chances of selling Maxcare, which is the same as a pay cut, Is it fair to have Maxcare plans over \$3000 which do not qualify financing but still count against salespeople target %. Selling higher priced Maxcares are harder and should pay more commission, especially when Carmax reported a 47% profit increase on Maxcare revenues in the subsequent financial quarterly reports, a change that directly resulted in lower salespeople income at the same time the company enjoyed 47% higher profits. The same could be said for GAP plan price increases with no commission increase. Increased sales procedure burdens like reviewing recall notifications, the new payment breakdown screen, monthly IDPs, CRRs combined with production pressures that result in lower quality cars on the lot, all of which equal a much longer sales process, higher returns and lower commissions than just a few years ago. Carmax salespeople can continue to look forward to lower future income potentials, continuing this 8 year trend. It's obvious that Carmax upper management thinks is more profitable to replace senior salespeople with young inexperienced employees trained by other rookie salespeople with less than 6 month experience, rather than paying a decent commission wage when compared to the increasing selling time and retain experience salespeople to drive what's possible providing a great customer buying experience. Many veteran mentors refuse to take an additional pay cut to train new hires for free. You would hope that upper management learned from the mistakes Circuit City's made that resulted in the loss of experienced salespeople and customers leaving to find more knowledgeable consultants. True world class companies pay their employees profit sharing bonuses during the Holiday season not a \$15 Walmart gift card, how ironic since Walmart has embarked on a program to increase their worker's wages by over a billion dollars this year. Carmax is a great place to work if you are ok with substandard commission wages.

Why is california the only state that get paid via average earnings

Why have I been ripped off for my snow removal time?

Why CarMax auto prices are to high ?

Uping sick day pay so people would not work when they are sick  
better health insurance coverage with cheaper premiums.

These are not all questions. You can formulate questions from these as you best see fit. Some points to ponder: ? Back pay on Average Earnings for the thousands and thousands of non-compensated work task hours the Company assigns - ie: Lot Merchandising. ? Acknowledge and compensate the Sales Consultants as the Revenue producers...CarMax primary and ancillary income all starts with a sale. No car sale = no Finance revenue, no MaxCare income, no MaxCare warranty work income, no need for purchasing department, no need for Biz Office, etc...this is a sales organization and the most important employees are the sales consultants...all other employees are there to SUPPORT sales. ? Through the years, the role of sales consultant has continued to be degraded relative to the level of respect shown to the sales consultants. Have management stop antagonizing their revenue producers - the sales consultants. ? Fire from the TOP...Get rid of the regional VP's, LGM's, Ops Mgrs, etc. responsible for the degraded morale of the workforce. KMX changed the culture to what now exists - it can change back. ? Fire the HR employees who have continually covered the "bad" behaviors of Management. ? Bring on board a CEO who is a visionary, a sales person....ie: an Austin Ligon. ? Bring on board a CEO who drives the Directors. ? Return to the REAL quality standards (old days) of CarMax quality vehicle. ? Hold ACCOUNTABLE the Ops department and Purchasing for producing a CarMax quality vehicle. Terminate those that will not get their jobs done correctly. ? Look at a graduated commission scale to reward the high level producers and to motivate and incentivize others to move into a higher level of sales production. ie: First 10 cars @ \$160 each, 11-15 cars @ \$200 each, 16-20 cars @ \$250 each, 21 or more @ \$300 each. SAME THING on MaxCare sales. ? Finance Income - you need to look at the financials and publications on the big dollars CAF generates - Sales Consultants get NO CUT of this. Compensate sales on finance deals - ie: 1/2 of 1% on the Amount Financed. ? INCREASE STOCK OPTIONS. Get EVERYBODY incentivized like those at the Corporate level. When the Company wins, all win. And all will be more closely tied to holding each other accountable for performance. ? More PAID vacation time for each level attained and held in President's Club. President's club members may not take all of their vacation, but they will be compensated for more. ? Mentors - more viable compensation for mentors. Is it possible that your best mentors left the program because of the compensation vs. time? If you want the best mentors producing the most work-ready sales consultants, then restructure the mentor compensation. ? Presidents Club - they took away the advantage of "Best Months" relative to MaxCare sales...they changed and made the consultant take the MaxCare penetration % for the same months counted for highest unit sales. This caused Presidents club members to drop out, lose their demo, lose their higher commission per sale, decrease their contributions to 401(k) and decrease the Company's 401(k) matching. ? Vehicle Appraisal Purchases - KMX's highest and best annualized ROI, with the lowest risk, has been that of its wholesale auction market. The wholesale biz segment is transacted on a business-to-business basis, mitigating a large part of the risks and costs associated with consumer vehicle sales. This is a material and integral part of the Company's cash flow. The consultant should be paid a minimum \$100 per appraisal purchase. ? Attaching and securing a trade takes the consultant additional time. It takes them away from selling. The consultant should be paid a minimum \$100 per appraisal purchase. ? Self police - get rid of our own "bad seeds". They hurt our reputation. Thin the herd. ? Acknowledge and utilize the practice of "highest and best use" - sales consultants should be SELLING - not

merchandising the lot. ? Staffing - flooding the floor with consultants. We need to negotiate per shift head count. Also, need to hold Biz Office accountable for same so that adequately staffed to walk deals in a timely manner. Should look at and establish what "timely" is so as to hold them accountable. ? Partners List - return to the Consultants their ability to have a Partners List. They should have a say in who they feel is the best match to the customers personality, and who they trust with their income. ? Part-timers are to be minimized from Sales hours, including that of the eOffice. ? e-Office - priority will be given back to staffing e-Office with the best sales consultants, with adequate time-length of shift. eOffice shifts will be bid by Seniority. Part-timers will not participate in the bidding. Why have CarMax employees found themselves in this position? 1) They spend time griping and complaining instead of putting together a viable action plan. No one has had the backbone to do anything about it. 2) Management has been smart about implementing the cultural changes incrementally. Remember, newbies do not have a reference point to compare how CarMax is "now" to what it was "then". 3) If Management can replace an Associate with a new one, without giving the new one an increased compensation and benefits package, why would they? What motivates Management to make any changes that financially benefit anyone other than themselves. Management (the C&E level) has one and only one responsibility - that responsibility is to maximize shareholder wealth. You need to get your arms around business basics and move out of your emotionally tied issues. They are not responsible for the financial prosperity of the company associates. As long as Management can continue to improve the stock value running the Company the way they do, why would they change? What would motivate them to change? Management will look at all three sides of the coin - Side A - how will collective bargaining hurt the stock value. Side B - how will collective bargaining help the stock value. Side C - what does "doing nothing" do to the stock value? Can they employ rhetoric and convince the associates to not organize. Ask Management to provide the same data, question and answer training, etc., IN FULL, as used in their EMPAR training. You really need to get in to how management has been trained for years to dissuade employee opinion on collective bargaining. CarMax associates must look at it in a similar light - Side A - what does collective bargaining do to help me and my family? Side B - what does collective bargaining do to hurt me and my family. Side C - where do I end up if I do nothing? It is this writer's opinion that CarMax employees need to organize. All employees - Sales, Biz Office, Ops personnel...We have the option of creating our own professional union, joining a well established deeply entrenched financially well-heeled union, or a hybrid of forming our own that is supported by and existing union. Creating our own doesn't give us much bargaining power, as we do not have cash on hand to support a strike fund. Management knows this. If an existing union would support us (in financial consideration of a portion of dues), we could form our own and then grow and expand it to all car dealerships (not just CarMax) on a nationwide basis. Most impactful way is to bring in an existing union that has the largest influence on the Company. Everyone (Techs, Inventory, Sales, Biz Office, Purchasing) employed at CarMax is required to drive a vehicle as part of their work assignment and compensation, vehicle inventory is delivered by motor transport, some wholesale vehicles are shipped out by motor transport, parts are delivered by motor transport, mail and overnight courier packages are delivered by motor transport...look at the TEAMSTERS. ? Very important to sort out - unions collect dues. What amount of monthly dues are we willing to pay in exchange for what compensation increases we will receive. What will we get for what we pay? Does \$100 month in dues get you \$1000 more in commissions, better work environment, etc? You need to look at the what and the when of how this falls into place.



Are we going to have a raise as a sales person and how tom makes that much money and i am still charged for return after 5 days.

N/a

Why is there no safety (security) at any Carmax. Some areas are a dangerous. Late night lock ups, angry customers. We do not feel safe. No manager cares. I feel they won't act until some one gets severely hurt. Why did Carmax Ontario not close for the day when the man got killed on the test drive. It was very distasteful. All they care about his money. We spend sometimes 2 hours on appraisals. Why aren't we compensated even if they do not sell. 5-10\$... Something

Is it fair that we can't transfer for 6 months because of one corrective

Why isn't there a cross utilization of training for the respective divisions? (Business Office to Sales Consultant and vice versa) It would allow for a more seamless process for customers

profit margin increase per vehicle sold last ten yrs.

The training and associate development is just a way to justify having sales managers. In most cases, they know less than the sales consultant.

No subsidy pay backs!!! Pay us for the hrs you require us to work, and commission should be additional pay to the states minimum wage laws. If you are paid minimum wage (draw as they call it) as a result of your commission not exceeding the excessive hours they make you work that are not income producing, why should you pay Carmax back for those hrs you are required to work, ie morning huddles, Sunday meetings, inventory, lock up at night, 8:30am Saturday mornings, all totalling more than 6hrs a week, more than 24hrs a month, which CarMax terms "subsidy". So, if your commission doesn't exceed the hrs required to attend these useless huddles, meetings, inventory, lock up, and more, you are effectively paying Carmax to work there. Further, when a car is returned, the Associate is the most vested person in hours, labor and income to effectuate the sale of the vehicle (on average 3hrs per transaction from start to finish) however, is the only employee who suffers the financial loss...all monies regarding that sale are deducted from their viper account, with only one exception, if you run a credit application, you keep 15.00 dollars. All other employees are paid per hr on all sales, all returns and on all appraisals whether appraisals are purchased or not. Does any other employee at CarMax, aside from Sales Associates, start their work week in the negative owing Carmax money???? Seriously, who does this??

eOffice shift

I think employees should get 15 to 20 dollars for every appraisal we do.

CarMax puts a lot of emphasis into sales development but I see very little development of sales consultants to become sales managers. Most if not all sales managers in my store have come from elsewhere. How about working with sales consultants from within who have aspirations to become a sales manager, promote from within rather than bringing in others from the outside.

When can we get a pay increase

N/A

why is buying a wholesale car such a pain and complicated?

Are you grateful to be employed by CarMax? Yes!!! I love my job I just want to be paid fairly.

Legitimacy of Compass Survey

Compass survey legitimacy

No more huddles please

.

why do you think they dont want to pay you more?

Why not delegate 'merchandising' and 'lock-ups' to be done before opening and/or after closing to hourly or salaried individuals?

Do you feel that the sales consultants have new responsibilities added to their job description often to make other departments jobs easier? Do you think that as sales consultants we do more work when a vehicle is attached? Do you think that as Sales Consultants we have influence if the customer decides to sell to us or keep it detached from the deal and just sell it privately?

Does management or corporate feel it is fair that Sales Consultants have to work long hours a lot of times in vain, just to try and make ends meet, whereas other departments don't have to stay hours late, get the same amount of pay and get more flexibility in the scheduling. Why do we have to wait 6 months to transfer to another department, if it isn't working well for an associate in one area but they are well trained in another why not just transfer them ?

getting paid for the appraisal purchase in trades.

how much do you like your commission to be ?

Do you think \$160 is a fair commission for the sale of a vehicle?

personal feelings about managers and how we are treated.

The people of USA have the Right to get pay for they loyalty ,hard work and effort and CARMAX doesn't met all above.

I just want more money for my time and effort, club levels are great and all but stuff happens (being out injured for a month) and I know I am a better employee then most of my coworkers. Should be compensated based on work ethic, job performance and professionalism.

Why do we have to fall in subsidy for hours that are worked if we do not sale a car ? Do you feel it is unfair that we have to pay the company back when falling in subsidy?

did monty sibley get canned? also is this a smoker vehicle?

Were you blatantly lied to in your interview about how much money you would make as a Sales Consultant at CarMax? Did you give up a good-paying job thinking you would make more money only to earn less than the job you left?

Do you feel it is right when you receive Subsidy pay, that you have to pay it back from your next commission check...which means you were not paid AT ALL for your time the previous pay period?

employee ownership

Do you think it's fair that calls are routed through eoffice for questions other than Sales?, Do you feel that Carmax should compensate Sales Consultants for their use of personal cell phones used to conduct business?

Why only raise subsidy pay if consultants are expected to NOT get subsidy?

Do you think you are fairly compensated for vacation and sick leave?

Do you believe CarMax provides you with adequate opportunities for growth within the company?

Not sure but you got some good ones already. Keep it coming!

during sale ,too many issues with vehicles that need manage attention or take it to shop. This could slow the process and move to next appointment and cause split

how much income is being lost by senior sales consultants due to CarMax hiring practices. in other words trying to eliminate president club membership.

Why are the Sales Consultants not paid a percentage of the profit of the individual car?

Do you really want to work for Carmax? Are you looking for another job? Why do you stay at a job you don't like?

I think you should be up front and ask if employee's want to join a union as opposed to hiding it in structured questions to get the response you want.

Address the condition of car .

Should entire team get bonus (like managers) when store hits budget daily?

Questions about other departments.

1. Should President Club rules be revised to allow for easier qualification? 2. Is it fair that President Club members have to re-qualify every 3--6-12 months?

salary plus commission to improve earning in lowincome periods

1, Restructuring a managers commission to ensure they work to develop sales consultants appose to sitting at a console and monitoring walk ins. 2. I program to develop internal managerial candidates opposed to hiring outsiders who have had no managerial experience or auto sales knowledge.

Overstaffing and high turn over.

why do we get points for being a minute or so late when we are scheduled an hour before the store opens and have no real duties before opening. Plus if we stay late to close a deal the previous night and come in a minute late why is it such a huge issue. we should have a 10-15minute grace period.

Do you believe sales associates would be more successful if a minimum living wage was assured, thus operating from the light of a

supportive caring environment. Or is the current fear of not sustaining yourself the better motivator?

We need sales managers that have actually been consultants before hand so they know how to handle situations

A minimum Day pay of \$50.00. No more subsidy.

If carmax cares that ive been homeless for 11months living in motels.

equal opportunity to be promoted, not only good ol' boys

What can we expect to be different & what time frame can we expect improvements?

Why can't we get commission an hourly pay in small format

No

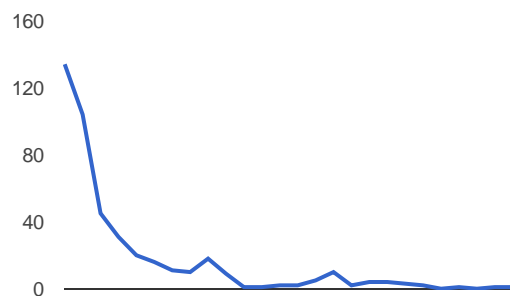
Eoffice should not be mandatory when we have a customer in the store thats ready to purchase.

Do you feel you earn more in a month at Carmax than you would in an hourly paid corporate retail position?

Can CarMax management make a sincere effort to change the sales culture? This CAN be done through more competent management that can lead by example instead of fear.

**Thank you. Your answers will illuminate the way forward for the KMX Collective. We will release results of the Questionnaire soon. You are also invited to join the KMX Collective. Visit us at [www.KMXCollective.com](http://www.KMXCollective.com).**

## Number of daily responses



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**CarMax Auto Superstores, Inc.**

**Case 05-CA-176501**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its facility located at 16411 Shady Grove Road, Gaithersburg, Maryland 20877, including all places where the Charged Party normally posts notices to employees at that facility. The Charged Party will keep all Notices posted for 60 consecutive days after the date of initial posting. The Charged Party will grant reasonable access to its facility to agents of the Regional Director for the purpose of monitoring compliance with this posting requirement. It is expressly understood that neither a copy of this Agreement, nor any other notice describing the terms of this Agreement (including the Non-Admission clause), shall be posted with the Notice to Employees.

**E-MAILING AND MAILING NOTICE** - The Charged Party will e-mail a copy of the signed Notice in English and in additional languages if the Regional Director decides that it is appropriate to do so, to all employees who worked at the facility located at 16411 Shady Grove Road, Gaithersburg, Maryland 20877 at any time since May 6, 2016, for whom the Charged Party has e-mail addresses. The message of the e-mail transmitted with the Notice will state: "We are distributing the Attached Notice to Employees to you pursuant to a Settlement Agreement approved by the Regional Director of Region 5 of the National Labor Relations Board in Case 05-CA-176501." The Charged Party will forward a copy of that e-mail, with all of the recipients' e-mail addresses, to the Region's Compliance Officer at [heather.keough@nlrb.gov](mailto:heather.keough@nlrb.gov). In addition, the Charged Party will send a copy of the signed Notice to the Charging Party at his address at 402 King Farm Blvd., Suite 125-145, Rockville, Maryland 20850. The Charged Party will provide the Regional Director written confirmation of the date of mailing. It is expressly understood that neither a copy of this Agreement, nor any other notice describing the terms of this Agreement (including the Non-Admissions clause) shall be e-mailed with the Notice to Employees.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**NON-ADMISSION** — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

**BACKPAY** — Within 14 days from approval of this Agreement, the Charged Party will make whole the employee named below by payment to him of the amounts opposite his name by providing payment to the NLRB to distribute to the Charging Party. The Charged Party will make appropriate withholdings for the named employee. No withholdings should be made from the interest portion of the backpay. The Charged Party will also mail to the Regional Director a completed Report of Backpay Paid Under the National Labor Relations Act, which the Regional Director will file with the Social Security Administration for the purpose of allocating the payments to the appropriate calendar year.

	<u>Backpay</u>	<u>Interest</u>	<u>Adverse Tax Consequences</u>	<u>Total</u>
Montgomery Blair Sibley	\$518	\$17	\$3	\$538

Exhibit "D"

*These amounts contemplate that this Settlement Agreement is approved by February 20, 2017. If not approved by that date, these amounts may continue to accrue.*

**EXPUNGEMENT** — The undersigned parties expressly and specifically agree that the expungement language set forth in the Notice does not preclude the Charged Party from sequestering and retaining the expunged documents for the purpose of complying with its evidence preservation obligations, defending against charges, lawsuits, or complaints filed by or with governmental agencies or by or on behalf of the Charging Party, arbitration proceedings involving the Charging Party and the Charged Party, or responding to a subpoena or administrative or governmental demand for such documents. Any reference to the May 6, 2016 termination of the Charging Party shall be physically removed from his personnel file. The actual documents may, if necessary, be retained by the legal department and/or outside counsel for the Charged Party for the sole purpose of preserving them for use in litigation or other proceedings as described above in this paragraph, and access to the documents shall be limited to individuals with a legitimate need to know, including but not limited to the legal department and/or outside counsel for the Charged Party, and consistent with the purposes stated above. The Charged Party will notify the Charging Party and the Regional Director in writing that this has been done and that the May 6, 2016 discharge will not be used against the Charging Party in any way, except as described in this paragraph. This provision does not apply to any references in the Charged Party's files to the post-discharge misconduct that the Charging Party engaged in on May 10, 2016, or to any references in the Charged Party's files to the Charging Party's ineligibility for rehire based on his May 10, 2016 misconduct. The language of this paragraph of the Settlement Agreement shall govern the Charged Party's obligations with respect to expungement.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case, including all allegations covered by the attached Notice to Employees made part of this Agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**PARTIES TO THE AGREEMENT** — For the purposes of this Agreement, the Charged Party shall include CarMax Auto Superstores, Inc., as well as its parent, affiliates, subsidiaries, divisions, successors and assigns in such capacity, and the current, future and former employees, officers, directors, trustees and agents thereof (collectively referred to throughout this Agreement as "the Charged Party"). If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve this Settlement Agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, the Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_ No \_\_\_\_\_  
          Initials                      Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this Agreement. No further action shall be taken in the above captioned case provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> <b>CarMax Auto Superstores, Inc.</b>		<b>Charging Party</b> <b>Montgomery Blair Sibley</b>	
By:	Name and Title	Date	By: Name and Title Date
<i>/s/ Joshua B. Waxman</i> 2/14/17			
Print Name and Title below Joshua B. Waxman Counsel for Carmax			Print Name and Title below
Recommended By:		Date	Approved By: Date
<i>/s/ Andrew Andela</i> 02/28/17			<i>/s/ Charles L. Posner</i> 02/28/2017
Andrew Andela Field Attorney			Charles L. Posner Regional Director, Region 5