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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CARLOS CRUZADO, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

ONTARIO T, INC., a California
corporation doing business as JOHN
ELWAY'S CROWN TOYOTA; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVSB2027249

[Assigned for all purposes to the Hon. David Cohn,
Department S-26]

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE OF CLAIMS**

Complaint Filed: December 10, 2020
Trial Date: None

JOINT STIPULATION OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

This Joint Stipulation of PAGA Settlement and Release of Claims is entered into by and between Plaintiff Carlos Cruzado ("Plaintiff") as a representative of the State of California Labor and Workforce Development Agency ("LWDA") on behalf of himself and other allegedly aggrieved employees, as well as his respective counsel, on the one hand, and Defendant Ontario T, Inc. ("Defendant") (Plaintiff and Defendants referred to as "Parties"), on the other hand.

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. "Action" means and includes the civil lawsuit entitled *Carlos Cruzado v. Ontario T, Inc.*, filed on or about December 10, 2020, in the Superior Court of the State of California, County of San Bernardino, and designated as Case No. CIVSB2027249.

1.2. Agreement. "Agreement" means this Joint Stipulation of Private Attorneys General Act ("PAGA") Settlement and Release of Claims, which includes the Definitions, Recitals, and all Exhibits attached hereto but excludes any caption pages which may or may not be filed with this Agreement.

1.3. Complaint. "Complaint" means the operative Complaint.

1.4. Court. "Court" means the Superior Court of California, County of San Bernardino, the Honorable David Cohn presiding.

1.5. Defendant. "Defendant" means Ontario T, Inc., doing business as John Elway's Crown Toyota.

1.6. Defendant's Counsel. "Defendant's Counsel" means Fisher & Phillips LLP. For purposes of providing any notices required under this Agreement, Defendant's Counsel shall refer to Spencer W. Waldron, Fisher & Phillips LLP, 2050 Main Street, Suite 1000, Irvine, California 92614.

1.7. Effective Date. "Effective Date" means the date that the Court grants approval of this settlement.

1.8. Gross Settlement Amount. "Gross Settlement Amount" means the maximum settlement amount of Two Hundred Sixty-Four Thousand Dollars and Zero Cents (\$264,000.00)

1 to be paid by Defendant in connection with an order granting approval of the settlement or
2 entering final judgment in the Action. The Gross Settlement Amount is inclusive of any and all
3 PAGA penalties (75% of which is designated for the LWDA Payment and 25% of which is
4 designated for all Individual PAGA Payments), Settlement Administration Expenses, and
5 Plaintiff's Counsel's Fees and Costs Payment, Plaintiff's Service Award.

6 **1.9. Individual PAGA Payment.** "Individual PAGA Payment" means the payment
7 from the Net Settlement Amount to be distributed to PAGA Settlement Members pursuant to
8 Paragraph 3.6.

9 **1.10. LWDA Payment.** "LWDA Payment" means the payment from the Net
10 Settlement Amount to be distributed to the California Labor and Workforce Development
11 Agency ("LWDA") pursuant to Paragraph 3.6.

12 **1.11. Net Settlement Amount.** "Net Settlement Amount" means the portion of the
13 Gross Settlement Amount available after deductions for any Court-approved Settlement
14 Administration Expenses, Plaintiff's Counsel's Fees and Costs Payment, and Plaintiff's Service
15 Award.

16 **1.12. PAGA Notice.** "PAGA Notice" means the Notice of Private Attorneys General
17 Act (California Labor Code § 2698, *et seq.*) Settlement Award in the form attached hereto as
18 **Exhibit A** that will be sent by the Settlement Administrator to the PAGA Settlement Members
19 notifying them of the settlement.

20 **1.13. PAGA Period.** "PAGA Period" means the period from June 10, 2019, through
21 December 31, 2021.

22 **1.14. PAGA Settlement Members.** "PAGA Settlement Members" or "PAGA
23 Settlement Group" mean all current and former non-exempt employees who worked for
24 Defendant in the State of California and were paid, in whole or in part, on a commission basis at
25 any time from June 10, 2019, through December 31, 2021. Defendant represents that there are
26 approximately 241 PAGA Settlement Members during the PAGA Period, and approximately
27 8,800 total pay periods at issue during the PAGA Period.

28 **1.15. Parties.** "Parties" means Plaintiff and Defendant.

1 **1.16. Plaintiff.** “Plaintiff” means Carlos Cruzado on behalf of himself and as a
2 representative of the LWDA.

3 **1.17. Plaintiff’s Counsel.** “Plaintiff’s Counsel” means Larry W. Lee, Kristen M.
4 Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C.

5 **1.18. Plaintiff’s Counsel’s Fees and Costs Payment.** “Plaintiff’s Counsel’s Fees and
6 Costs Payment” means the payment, subject to Court approval, from the Gross Settlement
7 Amount for Plaintiff’s Counsel’s attorneys’ fees and costs incurred in association with the
8 litigation and resolution of the Action.

9 **1.19. Plaintiff’s Service Award.** “Plaintiff’s Service Award” means the amount from
10 the Gross Settlement Amount not to exceed Ten Thousand Dollars (\$10,000.00) to be paid to
11 Plaintiff in recognition of his efforts in prosecuting the Action for the benefit of the State of
12 California and PAGA Settlement Members. Plaintiff’s Service Award is subject to Court
13 approval.

14 **1.20. Released Parties.** “Released Parties” means Defendant, its present and former
15 parents, subsidiaries, affiliates, joint ventures, shareholders, officers, directors, employees,
16 agents, registered representatives, attorneys, insurers, successors and assigns, and any other
17 persons acting by through, under or in concert with any of them.

18 **1.21. Settlement Administrator.** “Settlement Administrator” means Phoenix
19 Settlement Administrators, the independent third-party settlement administrator mutually agreed
20 on by the Parties, subject to Court approval, to administer the settlement.

21 **1.22. Settlement Administration Expenses.** “Settlement Administration Expenses”
22 means the amount payable from the Gross Settlement Amount to the Settlement Administrator
23 for administering this settlement, including but not limited to, establishing a Qualified Settlement
24 Fund (“QSF”), printing, distributing, or tracking mailings or distributions, processing any
25 required tax payments or reportings, providing any required tax forms, distributing the Individual
26 PAGA Payments, Plaintiff’s Service Award, Plaintiff’s Counsel’s Fees and Costs Payment, and
27 LWDA Payment, and providing any necessary reports or declarations requested by both
28 Plaintiff’s Counsel and Defendant’s Counsel. The Settlement Administration Expenses are

1 subject to Court approval.

2 **2. RECITALS**

3 **2.1. Plaintiff's PAGA Letter to LWDA.** On or about November 12, 2020, Plaintiff
4 sent written notice to the LWDA alleging that Defendant violated Labor Code §§ 201-204, 226,
5 226.2, 1194, 1197, 1197.1, and 2802. On or about January 6, 2021, Defendant filed a notice with
6 the LWDA alleging that no violations of the Labor Code occurred, as stated in Plaintiff's PAGA
7 Letter. After consideration of Defendant's alleged cure notice, and Plaintiff's subsequent written
8 dispute, on January 21, 2021, the LWDA determined that a curable action was not alleged and as
9 such no cure occurred.

10 **2.2. Initiation of Action.** On or about December 10, 2020, Plaintiff filed a class and
11 representative action complaint on behalf of himself, the State of California, and other aggrieved
12 employees, alleging six causes of action for: (1) violation of Labor Code §§ 226.2, 1194, 1197,
13 and 1197.1; (2) violation of Labor Code § 226.7; (3) violation of Labor Code §§ 226 and 226.2;
14 (4) violation of Labor Code § 2802; (5) violation of Business and Professions Code § 17200, *et*
15 *seq.*; and (6) violation of Labor Code § 2698, *et seq.* Plaintiff alleged that Defendant failed to pay
16 all minimum wages owed for non-productive time, failed to provide off-duty rest breaks, failed
17 to provide accurate itemized wage statements, and failed to reimburse business expenses to all
18 employees who were paid in part on a commission basis. Plaintiff's PAGA claim was predicated
19 on the underlying violations of the Labor Code.

20 **2.3. Mediation and Settlement.** Shortly after Plaintiff filed his initial complaint,
21 Defendant's Counsel notified Plaintiff's Counsel regarding the existence of a signed arbitration
22 agreement between the Parties containing a class action waiver. The Parties subsequently agreed
23 to engage in private mediation and stay discovery. On or about September 1, 2021, the Parties
24 attended a mediation before Todd Smith, Esq., an experienced wage-and-hour mediator.
25 Although the Parties did not reach an agreement at the mediation, the Parties continued their
26 arm's-length negotiations with the assistance of Mr. Smith and ultimately agreed to a settlement.
27 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
28 associated with litigation, including the risks of proving Plaintiff's claims at trial, the merits of

1 Defendant's potential defenses, and the significant delay and potential appellate issues inherent
2 to litigation.

3 **2.4. Dismissal of Class Claims.** Prior to seeking Court approval of the Settlement,
4 Plaintiff will file a Request for Dismissal of the alleged class claims without prejudice as to the
5 putative class. Upon dismissal of the class claims, the Complaint will allege a single cause of
6 action for violation of the PAGA.

7 **2.5. Intent of the Parties.** The Parties agree to a settlement to resolve all disputes and
8 litigation between the Parties. It is the desire of the Parties to fully, finally, and forever settle,
9 compromise, or discharge any and all PAGA claims, rights, demands, charges, complaints,
10 causes of action, obligations or liability of any and every kind that were or could have been
11 asserted in the Action or that arise out of the alleged facts, circumstances, and occurrences
12 underlying the allegations in the Action. The settlement represents the Parties' good-faith
13 compromise of the claims raised in the Action, based upon their assessment of the mutual risks
14 and costs of further litigation.

15 **2.6. No Right to Opt Out.** The Parties agree there is no statutory right for any PAGA
16 Settlement Member to opt out or otherwise exclude himself or herself from the settlement.

17 **2.7. No Admission of Liability or Violation.** Defendant has contended and continues
18 to contend that the allegations in the Action have no merit and do not give rise to liability.
19 Defendant denies all of the allegations in the Plaintiff's PAGA notice to the LWDA and the
20 Complaint. This settlement is a compromise of such disputed claims. Defendant has agreed to
21 settle the Action on the terms and conditions set forth in this Agreement for the sole purpose of
22 avoiding the burden, expense, and uncertainty of continuing the Action.

23 **2.8. Plaintiff's Counsel's Investigation and Evaluation.** Based on Plaintiff's
24 Counsel's investigation and evaluation over the course of litigation (after conducting informal
25 discovery in connection with mediation and analyzing the data produced by Defendant and
26 evaluating potential damages), Plaintiff's Counsel is of the opinion that the terms set forth in this
27 Agreement are fair, reasonable, adequate, and is in the best interests of the PAGA Settlement
28 Members and the State of California.

1 **2.9. Stipulation for Settlement Only.** This Agreement is contingent upon the
2 approval by the Court. Defendant does not waive its rights to contest whether to contest the
3 merits of the claims being asserted by Plaintiff in the Action.

4 **3. SETTLEMENT PROCEEDS**

5 **3.1. Gross Settlement Amount.** Defendant agrees to pay the Gross Settlement
6 Amount of Two Hundred Sixty-Four Thousand Dollars (\$264,000.00), which shall be non-
7 reversionary, and inclusive of any and all PAGA penalties (75% of which is designated for the
8 LWDA Payment and 25% of which is designated for all Individual PAGA Payments), Settlement
9 Administration Expenses, Plaintiff's Service Award, and Plaintiff's Counsel's Fees and Costs
10 Payment.

11 **3.2. Plaintiff's Service Award and Release of Claims.** Subject to the Court's
12 approval, Defendant agrees to pay Plaintiff a Service Award of up to Ten Thousand Dollars
13 (\$10,000.00) from the Gross Settlement Amount as compensation of his efforts to prosecute the
14 Action and service as a representative on behalf of aggrieved employees and the State of
15 California, and for Plaintiff's release below. Defendant will not object to an application for Court
16 approval of a Service Award to Plaintiff in the amount of \$10,000.00. The Service Award shall
17 be in addition to any Individual PAGA Payment to which Plaintiff is entitled. The Settlement
18 Administrator will issue an IRS Form 1099 to Plaintiff in connection with this payment. Any
19 portion of Plaintiff's Service Award not approved by the Court shall be added to the Net
20 Settlement Amount to be distributed to the PAGA Settlement Members.

21 Plaintiff releases Defendant, and each of its subsidiaries, affiliates, predecessors or
22 successors in interest, or the officers, directors, shareholders, employees, attorneys, agents,
23 assigns, insurers, re-insurers, of any of them, from all claims, demands, rights, liabilities and causes
24 of action of every nature and description whatsoever, known or unknown, asserted or that might
25 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
26 regulation arising out of, relating to, or in connection with any act or omission by or on the part of
27 Defendant. (The release s shall be referred to hereinafter as the "General Release.")
28

1 With respect to the General Release, Plaintiff stipulates and agrees that upon the Effective
2 Date of this Agreement, Plaintiff shall be deemed to have, expressly waived and relinquished, to
3 the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
4 California Civil Code, or any other similar provision under federal or state law, which provides:

5
6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
7 **THAT THE CREDITOR OR RELEASING PARTY DOES**
8 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
9 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
10 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
11 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
12 **WITH THE DEBTOR OR RELEASED PARTY.**

13 Accordingly, if the facts relating in any manner to this resolution are found hereafter to be other
14 than or different from the facts now believed to be true, the release of claims contained herein
15 shall be effective as to all unknown claims.

16 **3.3. Plaintiff's Counsel's Fees and Costs Payment.** Subject to the Court's approval,
17 Defendants agree not to oppose Plaintiff's Counsel's request for attorneys' fees of up to one-
18 third (1/3) of the Gross Settlement Amount, or Eighty-Eight Thousand Dollars (\$88,000.00).
19 Defendant also agrees not to oppose Plaintiff's Counsel's request for reimbursement of
20 documented costs in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00). The
21 Settlement Administrator shall issue an IRS form 1099 to PAGA counsel. Any portion of
22 Plaintiff's Counsel's Fees and Costs Payment not approved by the Court shall be added to the
23 Net Settlement Amount to be distributed to the PAGA Settlement Members.

24 **3.4. Administration Expenses.** The Parties agree to use Phoenix Settlement
25 Administrators as the Settlement Administrator in this Action. Subject to the Court's approval,
26 Defendants agree to pay the fees and expenses of the Settlement Administrator, which shall not
27 exceed Three Thousand Dollars (\$3,000.00), and shall be paid from the Gross Settlement
28 Amount. Except as otherwise provided herein, if the Court does not grant approval of the
settlement, the Parties shall each pay one-half of any Settlement Administration Expenses
incurred to date.

3.5. Court Approval of Allocations from Settlement Payment. The requested

1 Plaintiff's Service Award, Plaintiff's Counsel's Fees and Costs Payment, and Settlement
2 Administration Expenses for allocation from the Gross Settlement Amount are not material terms
3 to the settlement. The Court's failure to approve the requested amounts does not give any Party
4 any basis to abrogate this Agreement. To the extent that the Court does not approve the requested
5 allocations or approves different allocations from the Settlement Amount, the remaining terms of
6 this Agreement shall remain binding on the Parties.

7 **3.6. PAGA Penalties.** All PAGA penalties shall be paid from the Net Settlement
8 Amount, which consists of the sum remaining from the Gross Settlement Amount after deduction
9 of Plaintiff's Service Award (\$10,000.00), Plaintiff's Counsel's Fees (\$88,000.00) and Costs
10 (\$15,000.00), and Settlement Administration Expenses (\$3,000.00). The Net Settlement Amount
11 is currently estimated to be One Hundred Forty Eight Thousand Dollars (\$148,000). For
12 purposes of computing taxes, One Hundred Percent (100%) of the Net Settlement Amount shall
13 be classified as civil penalties, unless otherwise required by law, and shall be distributed as
14 follows:

15 **3.6.1.** Seventy-Five Percent (75%) of the Net Settlement Amount, or
16 approximately One Hundred Eleven Thousand Dollars (\$111,000.00) shall be paid to the
17 LWDA, which represents civil penalties payable to the LWDA under the PAGA, Labor Code §
18 2698, *et seq.*

19 **3.6.2.** Twenty Five Percent (25%) of the Net Settlement Amount, or
20 approximately Thirty Seven Thousand Dollars (\$37,000.00) (the "Individual PAGA Payment")
21 shall be paid to the PAGA Settlement Members, which represents civil penalties and interest
22 payable to the aggrieved employees. The Settlement Administrator will issue IRS Form 1099s to
23 PAGA Settlement Members in connection with these payments.

24 (i) Each PAGA Settlement Member will receive a pro rata share of
25 the Individual PAGA Payment. The Individual PAGA Payment shall be distributed to PAGA
26 Settlement Members based on the total number of pay periods each PAGA Settlement Member
27 was paid wages on a commission basis during the PAGA Period.
28

1 **3.6.3.** The Gross Settlement Amount is premised on their being 241 Aggrieved
2 Employees who worked a total of 8,800 pay periods during the PAGA Period. Should the actual
3 number of pay periods worked by the Aggrieved Employees exceeds 9,680 (i.e., 10 percent over
4 8,800), the Gross Settlement Amount will increase in proportion to the overage. For instance, a
5 12 percent increase in the pay period count will result in a 2 percent increase in the Gross
6 Settlement Amount. Alternative to paying an increased Settlement Amount, Defendant may
7 select an earlier end date to the PAGA Period which brings the total workweeks below 9,680 pay
8 periods.

9 **3.7. No Tax Advice or Liability.** Except as otherwise stated within this Agreement,
10 all payments from the Gross Settlement Amount shall be characterized as payments subject to
11 Form 1099 reporting. The Parties have had an opportunity to consult with independent tax
12 counsel. The Parties are not giving any tax advice in connection with the settlement or any
13 payments to be made pursuant to this Agreement. The Parties do not intend anything contained
14 in this Agreement to constitute legal advice regarding the taxability of any amount paid
15 hereunder, nor shall anything in this Agreement be relied upon as such. Each recipient of a
16 settlement payment shall be solely and legally responsible for paying all applicable taxes on their
17 respective settlement payments and shall indemnify and hold harmless the Parties from any
18 claim or liability for taxes, penalties, or interest arising as a result of the payments.

19 **4. PAGA SETTLEMENT ADMINISTRATION**

20 **4.1. Funding of the Gross Settlement Amount.** Within fifteen (15) calendar days of
21 the Effective Date, Defendant shall deposit the Gross Settlement Amount into the QSF
22 established by the Settlement Administrator.

23 The QSF shall be an interest-bearing account at a federally insured bank that is
24 established by the Settlement Administrator. The QSF shall be an interest-bearing account at a
25 federally insured bank that is mutually acceptable to the Parties and the Settlement
26 Administrator. The funds exclusively in U.S. Treasury securities with average maturities of less
27 than 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is intended to
28 be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treas.

1 Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement
2 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and
3 administer the Settlement Account in such a manner as to qualify and maintain the qualification
4 of the QSF as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code
5 and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state and local and income and other tax
6 reporting, return, and filing requirements with respect to the QSF and any interest or other
7 income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any estimated
8 taxes, interest, or penalties) with respect to the interest or other interest earned by the QSF, and
9 (ii) fees, expenses and costs incurred in connection with the opening and administration of the
10 QSF and the performance of its duties and functions as described in this Agreement. The
11 aforementioned taxes, fees, costs and expenses shall be treated as and included in the costs of
12 administering the QSF and as Claims Administration Expenses. The Parties and the Settlement
13 Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the
14 earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement
15 shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(e)(ii). The
16 Parties agree to cooperate with the Settlement Administrator and one another to the extent
17 reasonably necessary to carry out the provisions of this Section.

18 **4.2. Timing of Distribution.** Within ten (10) calendar days after Defendant’s funding
19 of the QSF, the Settlement Administrator will distribute payments as follows: (1) Plaintiff’s
20 Counsel’s Fees and Costs Payment to Plaintiff’s Counsel; (2) Plaintiff’s Service Award to
21 Plaintiff; (3) Individual PAGA Payments to PAGA Settlement Members; and (4) the portion of
22 the PAGA payment to be paid to the LWDA.

23 **4.3. Certification of Completion.** Within fifteen (15) calendar days of completion of
24 distribution of payments, the Settlement Administrator shall provide to the Parties, for filing with
25 the Court, a declaration verifying, under oath, that the Settlement Administrator has effected
26 disbursement of the Net Settlement Amount pursuant to the terms of this Agreement.

27 **4.4. Notice to PAGA Settlement Members.** Within fifteen (15) calendar days after
28 approval of the settlement by the Court, Defendant shall provide the Settlement Administrator

1 with a PAGA employee list in Excel spreadsheet format, which shall contain the PAGA
2 Settlement Members' last known full names, addresses, telephone numbers, Social Security
3 numbers, and number of pay periods each PAGA Settlement Members was paid wages on a
4 commission basis during the PAGA Period (the "PAGA Employee List"). The PAGA Employee
5 List shall be held as private and confidential information and shall not be shared with Plaintiff's
6 counsel or any third party by the Settlement Administrator without the express written consent of
7 Defendant's counsel and/or court order.

8 **4.4.1.** All settlement checks sent to the PAGA Settlement Members shall be
9 accompanied with a PAGA Notice, attached hereto as **Exhibit A**, which shall provide a brief
10 description of the lawsuit and this Settlement.

11 **4.4.2.** Prior to mailing the PAGA Notice and Individual PAGA Payment checks
12 to PAGA Settlement Members, the Settlement Administrator shall update the addresses of the
13 PAGA Settlement Members by reference to the National Change of Address Database
14 maintained by the United States Postal Service. If an Individual PAGA Payment check is
15 returned as non-deliverable but with a forwarding address, the Settlement Administrator shall
16 resend the Individual PAGA Payment check to the forwarding address. If an Individual PAGA
17 Payment check is returned as non-deliverable with no forwarding address, the Settlement
18 Administrator shall conduct an advanced skip trace to locate the most current address of the
19 person to whom the Individual PAGA Payment check was addressed and resend the Individual
20 PAGA Payment check within five (5) calendar days to any updated address.

21 **4.5. Uncashed Checks.** PAGA Settlement Members are not required to submit claim
22 forms for their Individual PAGA Payments. All undeliverable or otherwise uncashed checks to
23 PAGA Settlement Members will expire after 180 days after the postmarked date of their initial
24 mailing. Once expired, the Settlement Administrator shall direct the principal for any settlement
25 payment that remains uncashed to the *cy pres* recipient: Legal Aid at Work.

26 **5. RELEASES**

27 **5.1. Release as to PAGA Settlement Members.** Effective upon complete payment of
28 the Gross Settlement Amount by Defendant, Plaintiff, on behalf of himself and as a

1 representative of the State of California, and all PAGA Settlement Members, hereby fully release
2 Defendant and all Released Parties from any and all claims for civil penalties under the PAGA
3 that were set forth, or could have been set forth based on the facts alleged in the Complaint.

4 **5.2. Non-Admission of Liability.** By entering into this Agreement, Defendant in no
5 way admits any violation of law or any liability whatsoever to Plaintiff, PAGA Settlement
6 Members, individually or collectively, or the State of California, and expressly denies all such
7 liability. Neither this Agreement nor any other settlement document shall be offered in any case
8 or proceeding as evidence of any admission by Defendant of any liability on any claim for relief.
9 Rather, Defendant enters into this Agreement to avoid further protracted litigation and to resolve
10 and settle all disputes with Plaintiff, PAGA Settlement Members, or the State of California. The
11 Parties understand and agree that this Agreement and all exhibits thereto are settlement
12 documents and shall be inadmissible for any purpose in any proceeding, except in an action or
13 proceeding to approve, interpret, or enforce the terms of this Agreement. The Parties agree that,
14 to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to
15 and may be used as the basis for an injunction against or dismissal of any action, suit, or other
16 proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

17 **6. COURT APPROVAL**

18 **6.1. Approval of PAGA Settlement.** Plaintiff's Counsel shall request the entry of an
19 order granting approval, which shall include findings and orders: (i) approving the settlement,
20 (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State of
21 California, (iii) reciting the release terms, (iv) directing that the settlement's terms and provisions
22 be carried out; (v) entering final judgment in accordance with this Agreement; and (vi) retaining
23 jurisdiction to oversee administration and enforcement of the terms of this Agreement and the
24 Court's orders. Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's motion for
25 approval of PAGA settlement seeks relief inconsistent with or not specified by this Agreement.
26 In such event, Defendant reserves its right to address any assertions that are not contained in this
27 Agreement.

28 **6.2. Effect of Failure to Obtain Approval or Entry of Judgment.** In the event the

1 Court effects a material change to this Agreement or fails to enter final judgment in accordance
2 with this Agreement, or such final judgment is vacated or reversed, then this entire Agreement
3 will be voidable and unenforceable, subject to the Parties' agreement to the contrary. If the
4 settlement is not granted approval, the Parties agree that they will revert to their positions in the
5 Action prior to the time the settlement was reached. Except as otherwise stated in this
6 Agreement, the Action shall proceed as if no settlement had been attempted, unless the Parties
7 jointly agree to seek reconsideration or appellate review of the ruling or seek Court approval of a
8 renegotiated settlement.

9 **6.3. Waiver of Appeal Rights.** By accepting this settlement and authorizing entry of
10 judgment pursuant to this Agreement, Plaintiff and Plaintiff's Counsel hereby waive any and all
11 rights they may have to appeal any judgment, ruling, or order made by the Court in the Action,
12 including, without limitation, any order granting approval of PAGA settlement or any entry of
13 judgment. However, in the event that the Court does not approve this PAGA settlement, the
14 Agreement shall be void *ab initio* and the Parties, including Plaintiff and Plaintiff's Counsel,
15 shall retain any and all rights to appellate relief.

16 **6.4. Compliance with PAGA Procedures.** Plaintiff's Counsel shall comply with all
17 requirements and reportings to the LWDA for a PAGA settlement. Plaintiff's Counsel shall draft
18 a motion for approval of PAGA settlement and simultaneously submit this Agreement to both the
19 Court and LWDA, in compliance with Labor Code § 2699(1)(2).

20 **7. MISCELLANEOUS**

21 **7.1. Entire Agreement.** The Parties have arrived at this Agreement as a result of
22 arm's-length negotiations. Except as otherwise stated herein, all terms and conditions of this
23 Agreement are material to this Agreement and have been relied upon by the Parties in entering
24 into this Agreement. This Agreement constitutes the entire agreement between the Parties with
25 regard to the subject matter contained herein, and all prior and contemporaneous negotiations
26 and understandings between the Parties shall be deemed merged into this Agreement.

27 **7.2. Parties' Authority.** The signatories hereto represent that they are fully authorized
28 to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein.

1 **7.2.1. Counterparts.** This Agreement may be executed in one or more
2 counterparts, including via DocuSign, PDF, facsimile, and/or scanned copies, and when all
3 signatories have signed and delivered at least one such counterpart, each counterpart shall be
4 deemed an original, and when taken together with other signed counterparts, shall constitute one
5 signed Agreement, which shall be binding upon and effective as to all Parties.

6 **7.2.2. Facsimile or Scanned Signatures.** Any party may sign and deliver this
7 Agreement by signing on the designated signature block and transmitting that signature page via
8 facsimile, DocuSign and/or as an attachment (including PDF or scanned page) to an e-mail to
9 counsel for the other party. Any signature made and transmitted physically or electronically for
10 the purpose of executing this Agreement shall be deemed an original signature for purposes of
11 this Agreement and shall be binding upon the party who transmits the signature page.

12 **7.2.3. Binding Effect.** This Agreement shall be binding upon, and inure to the
13 benefit of, the Parties and their successors, and with respect to Plaintiff shall inure to the benefit
14 of his spouse(s), children, representatives, heirs, administrators, executors, beneficiaries,
15 conservators, attorneys, or assigns.

16 **7.2.4. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification,
17 or amendment of the terms of this Agreement, whether purportedly made before or after the
18 Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on
19 behalf of all Parties and then only to the extent set forth in such written waiver, modification, or
20 amendment, subject to any required Court approval. Any failure by any Party to insist upon the
21 strict performance by the other Party of any of the provisions of this Agreement shall not be
22 deemed a waiver of future performance of the same provisions or of any of the other provisions
23 of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to
24 insist upon the specific performance of any and all of the provisions of this Agreement.

25 **7.3. Construction.** The determination of the terms and conditions of this Agreement
26 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of
27 this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall
28 not be, construed against any party by virtue of draftsmanship.

1 **7.3.1. Captions.** The captions or headings of the sections and paragraphs of this
2 Agreement have been inserted for convenience of reference only and shall have no effect upon
3 the construction or interpretation of any part of this Agreement.

4 **7.3.2. Invalidity of Any Provision.** Before declaring any provision of this
5 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
6 extent possible consistent with applicable precedents so as to render all provisions of this
7 Agreement valid and enforceable.

8 **7.4. Further Acts and Cooperation Between the Parties.** The Parties agree to
9 cooperate and take all steps necessary and appropriate to effectuate all aspects of this Agreement,
10 to obtain approval of the settlement, and to enter final judgment on all claims. The Parties shall
11 cooperate fully with each other and shall use their best efforts to obtain the Court's approval of
12 this Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to
13 perform such further acts and to execute and deliver such other documents as are reasonably
14 necessary to carry out the provisions of this Agreement.

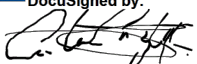
15 **7.5. Binding Agreement.** The Parties intend that this Agreement will be fully
16 enforceable and binding on all Parties pursuant to CCP § 664.6, and agree that this Agreement
17 will be admissible and subject to disclosure in any proceeding to enforce its terms. If an action is
18 brought to enforce this Agreement, the prevailing party shall be entitled to his/its reasonable
19 attorneys' fees and costs.

20 **7.6. Continuing Jurisdiction.** The Court shall retain jurisdiction over the Action, as
21 well as any and all matters arising out of, or related to, the implementation of this Agreement and
22 of the settlement contemplated thereby. Absent mutual agreement by the Parties, the Court shall
23 not have jurisdiction to modify the terms of this Agreement.

24 **7.7. Governing Law.** All terms of this Agreement shall be governed by and
25 interpreted according to the laws of the State of California.

26
27 Dated: November 30, 2021

PLAINTIFF CARLOS CRUZADO

DocuSigned by:

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Carlos Cruzado

Dated: November __, 2021

DEFENDANT ONTARIO T, INC.

_____[name]
_____[title], on behalf of Ontario
T, Inc.

APPROVED AS TO FORM

Dated: November ³⁰ __, 2021

DIVERSITY LAW GROUP, P.C.

DocuSigned by:

Larry W. Lee

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Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Carlos Cruzado

Dated: November __, 2021

FISHER & PHILLIPS LLP

Spencer W. Waldron
Attorneys for Defendant Ontario T, Inc.

Carlos Cruzado

Dated: 12/6/2021

DEFENDANT ONTARIO T, INC.

DocuSigned by:

Paxton Gagnet

Paxton Gagnet, Member

on behalf of Ontario T, Inc.

APPROVED AS TO FORM

Dated:

DIVERSITY LAW GROUP, P.C.

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Carlos Cruzado

Dated: 12/1/2021

FISHER & PHILLIPS LLP

DocuSigned by:

Spencer Waldron

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Spencer W. Waldron
Attorneys for Defendant Ontario T, Inc.