

1 or otherwise approved by the Court, which will notify Class Members of the settlement, explain the
2 basic terms of this Settlement Agreement, and inform Class Members of their options with regard
3 to the settlement.

4 7. "Class Period" means the period beginning on January 8, 2016 and ending on
5 November 24, 2021.

6 8. "Court" means the Superior Court for the State of California, County of Contra
7 Costa.

8 9. "Defendant" means Trimon, Inc., doing business as Monument Car Parts and
9 Superior Auto Parts Warehouse.

10 10. "Defendant's Counsel" means Donahue Fitzgerald LLP.

11 11. "Effective Date" will be the date of entry of the Final Approval Order and Judgment
12 if no objections to the settlement are filed. If objections are filed and overruled or withdrawn, and
13 no appeal is taken, then the Effective Date will be sixty-five (65) calendar days after the entry of the
14 Final Approval Order and Judgment. If an appeal is taken from the Court's overruling of objections
15 to the settlement, then the Effective Date will be twenty (20) calendar days after the appeal is
16 dismissed or after an appellate decision affirming the Final Approval Order and Judgment becomes
17 final.

18 12. "Enhancement Payment" means the amount that the Court authorizes to be paid to
19 Plaintiffs, in addition to their Individual Settlement Payments, in recognition of their efforts and
20 risks in assisting with the prosecution of the Lawsuit and in exchange for them executing a General
21 Release of Defendant, paid from the Gross Settlement Amount.

22 13. "Final Approval Hearing" means the hearing following Preliminary Approval and
23 distribution of the Class Notice to the Class, at which the Court will determine whether to fully and
24 finally approve the fairness and reasonableness of the settlement, and at which Plaintiffs will request
25 that the Court enter the Final Approval Order and Judgment, approve and award Attorneys' Fees
26 and Costs, Enhancement Payment, Individual Settlement Payments, and Administration Costs, and
27 take other appropriate or necessary action as described herein.

28 14. "Final Approval Hearing Date" means the date of the Final Approval Hearing.

1 15. “Final Approval Order and Judgment” means the order or orders entered by the Court
2 that, *inter alia*, finally approve(s) this Settlement Agreement, disposes of all issues raised in the
3 Lawsuit by way of judgment in conformity with California Rules of Court 3.769, and awards and
4 orders the payment of all required amounts pursuant to the terms of this Settlement Agreement.

5 16. “Gross Settlement Amount” or “GSA” means the maximum total payment of four
6 hundred thousand dollars (\$400,000) payable by Defendant under this Settlement Agreement,
7 inclusive of all Individual Settlement Payments, Attorneys’ Fees and Costs, Administration Costs,
8 and Enhancement Payments to Plaintiffs, two hundred thousand dollars (\$200,000) of which will
9 be funded by Defendant within five (5) calendar days of Preliminary Approval of the settlement,
10 with the remaining two hundred thousand dollars (\$200,000) to be funded one year thereafter. The
11 Gross Settlement Amount is non-reversionary, and exclusive of employer-side payroll taxes which
12 shall be paid separately.

13 17. “Individual Settlement Share(s)” means a Settlement Class Member’s *pro rata* share
14 of the Net Settlement Amount, which is to be determined in conformity with Paragraph 40(d), which
15 is inclusive of the employee-side payroll taxes, contributions, and withholdings with respect to the
16 wages portion of the Individual Settlement Shares (“Employee Taxes”). The net payment of each
17 Settlement Class Member’s Individual Settlement Shares (after reduction for Employee Taxes) is
18 referred to as his or her “Individual Settlement Payment.”

19 18. “Lawsuit” means the action entitled *Efren Gonzalez, et al. v. Trimon, Inc., et al.*, filed
20 in the Contra Costa County Superior Court and assigned case number C20-00023.

21 19. “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement
22 Amount that is available for distribution to Settlement Class Members, which will be the Gross
23 Settlement Amount less the amounts awarded for Attorneys’ Fees and Costs, Enhancement
24 Payments, and Administration Costs.

25 20. “Notice Plan” means the plan for the provision of notice to all Class Members under
26 this Settlement Agreement.

27 21. “Parties” means Plaintiffs, individually and on behalf of all Class Members, and
28 Defendant, who are each individually referred to as “Party.”

1 22. “Plaintiffs” or “Class Representatives” means Efren Gonzalez and Jason Hartman.

2 23. “Plaintiffs’ Released Claims” means that, in addition to the Settlement Class
3 Members’ Released Claims, in exchange for the consideration recited in this Settlement Agreement,
4 including but not limited to the Enhancement Payments, Plaintiffs, individually, release, acquit,
5 discharge, and covenants not to sue Defendant and any of the Released Parties for any claim,
6 whether known or unknown, which they have ever had, or hereafter may claim to have, arising
7 during the Class Period, relating to or arising out of any aspect of their relationship with Defendant.
8 The release by Plaintiffs includes a waiver of their individual rights under Section 1542 of the Civil
9 Code of the State of California, the specific terms and details of which are set forth in Paragraph 39.

10 24. “Preliminary Approval Order” means the order to be entered by the Court that
11 preliminarily approves the terms and conditions of this Settlement Agreement, including the content
12 of the Class Notice and Notice Plan, and sets a Final Approval Hearing.

13 25. “Released Parties” means Defendant Trimon, Inc., doing business as Monument Car
14 Parts and Superior Auto Parts Warehouse, and its former and present parents, officers, directors,
15 shareholders, employees, agents, attorneys, subsidiaries, divisions, assigns, predecessors,
16 successors, insurers, and all of their respective successors, subsidiaries, assigns, or legal
17 representatives.

18 26. “Response Deadline” means the date forty-five (45) days after the Settlement
19 Administrator mails the Class Notice to Class Members and the last date on which Class Members
20 may submit an opt-out/request for exclusion or object to the settlement.

21 27. “Settlement Administrator” means CPT Group, Inc., the neutral third-party
22 administrator mutually agreed upon by the Parties, subject to approval by the Court.

23 28. “Settlement Class” or “Settlement Class Members” means Class Members who have
24 not submitted a timely and valid Opt-Out/Request for Exclusion pursuant to Paragraph 47.

25 29. “Settlement Class Members’ Released Claims” means all claims, during the Class
26 Period, alleged in the operative complaint in the Lawsuit, or that could have been asserted based on
27 the facts, circumstances, transactions, occurrences, acts, omissions, or failures to act alleged by
28 Plaintiffs in the operative complaint in the Lawsuit for: (1) failure to pay all overtime wages; (2)

1 non-compliant meal periods and/or failure to make premium payments thereon; (3) non-compliant
2 rest breaks and/or failure to make premium payments thereon; (4) failure to pay minimum wages;
3 (5) failure to pay all wages in a timely manner and upon separation of employment; (6) failure to
4 provide accurate itemized wage statements; (7) failure to keep accurate and complete payroll
5 records; (8) failure to reimburse business expenses; and (9) unfair business practices related to the
6 Settlement Class Members' Released Claims, the specific terms and details of which are set forth in
7 Paragraph 38. This release excludes the release of claims not permitted by law.

8 30. "Workweek(s)" means a seven-day work week during the Class Period during which,
9 based on Defendant's records, Class Members were actively employed by Defendant and worked
10 during at least a portion of such Workweek in an hourly-paid or non-exempt position in California.

11 **RECITALS**

12 31. **Procedural History.** Plaintiffs filed their complaint on January 8, 2020 in the Contra
13 Costa County Superior Court, alleging: (1) failure to pay overtime pursuant to Labor Code §§ 510
14 and 1198; (2) failure to provide compliant meal periods and/or pay premiums owed thereon in
15 violation of Labor Code §§ 226.7 and 512(a) and the IWC Wag Orders; (3) failure to provide
16 compliant rest breaks and/or pay premiums owed thereon in violation of Labor Code § 226.7 and
17 the IWC Wage Orders; (4) failure to pay minimum wages pursuant to Labor Code §§ 1194, 1197,
18 and 1197.1 and the IWC Wage Orders; (6) failure to pay all wages owed timely during employment
19 and upon termination in violation of Labor Code §§ 201-202 and 204; (5) failure to provide accurate
20 itemized wage statements in violation of Labor Code § 226(a); (7) failure to keep requisite payroll
21 records in violation of Labor Code § 1174(d); (8) failure to reimburse business expenses in violation
22 of Labor Code §§ 2800 and 2082; and (9) violations of California Business and Professions Code
23 §§ 17200, *et seq.*

24 32. **Discovery and Investigation.** Plaintiffs' attorneys began their investigation into the
25 at-issue allegations well in advance of filing the complaint, and engaged in extensive informal and
26 formal discovery. For example, Class Counsel requested production of and reviewed key
27 information and documents such as Defendant's wage and hour policies, Class Members' contact
28 information, Class Members' time and payroll records, among other things. Class Counsel analyzed

1 time and payroll records and interviewed Class Members to determine violation rates. The Parties
2 met and conferred at length regarding the information and documents produced.

3 33. **Mediation.** The Parties participated in a full-day mediation before mediator Michael
4 J. Loeb, Esq. of JAMS. The settlement discussions were conducted at arm's-length. Although the
5 case did not settle at mediation, the Parties continued to negotiate with the assistance of Mr. Loeb,
6 and later came to an agreement on all material terms of this settlement and resolution of the Lawsuit.

7 34. **Benefits of Settlement.** Plaintiffs and Class Counsel recognize the expense and
8 length of continued proceedings necessary to litigate their disputes through trial and through any
9 possible appeals. Plaintiffs have also taken into account the uncertainty and risks of the outcome of
10 further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class
11 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
12 in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the difficulties
13 in establishing damages for Class Members. Plaintiffs and Class Counsel have also taken into
14 account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiffs and
15 Class Counsel have determined that the settlement set forth herein is a fair, adequate and reasonable
16 settlement, and is in the best interests of Class Members.

17 35. **Defendant's Reasons for Settlement and Non-Admission.** Defendant has
18 concluded that any further defense of this litigation would be protracted and expensive for all
19 Parties. Substantial amounts of time and resources of Defendant have been devoted and, unless this
20 settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs
21 and Class Members. Defendant has also taken into account the risks of further litigation in reaching
22 its decision to enter into this Settlement Agreement. Despite continuing to contend that it is not
23 liable for any of the claims set forth by Plaintiffs, Defendant has, nonetheless, agreed to settle in the
24 manner and upon the terms set forth in this Settlement Agreement to put to rest the claims as set
25 forth in the Lawsuit. Defendant has claimed and continues to claim that the Plaintiffs' Released
26 Claims and Settlement Class Members' Released Claims have no merit and do not give rise to
27 liability. This settlement is a compromise of disputed claims.

28

1 applicable law. In addition, as set forth herein, the Parties intend this settlement to be contingent
2 upon the Preliminary Approval and Final Approval of this Settlement Agreement; and the Parties
3 do not waive, and instead expressly reserve, their respective rights to prosecute and defend the
4 Lawsuit as if this Settlement Agreement never existed in the event the settlement is not finally
5 approved as set forth herein.

6 38. **Release of Claims.** As of the Effective Date, Plaintiffs and all Class Members who
7 did not submit valid requests for exclusion from the settlement will release and forever discharge
8 Defendant Trimon, Inc., doing business as Monument Car Parts and Superior Auto Parts Warehouse,
9 and its former and present parents, officers, directors, shareholders, employees, agents, attorneys,
10 subsidiaries, divisions, assigns, predecessors, successors, insurers, and all of their respective
11 successors, subsidiaries, assigns, or legal representatives (again, the “Released Parties”), from the
12 Settlement Class Members’ Released Claims during the Class Period. The Settlement Class
13 Members’ Released Claims include all wage-and-hour claims contained in the operative complaint
14 in the Lawsuit, or that could have been asserted in the Lawsuit based on the facts, circumstances,
15 transactions, occurrences, acts, omissions, or failures to act alleged by Plaintiffs in the operative
16 complaint during the Class Period. The Settlement Class Members’ Released Claims include all
17 claims based on allegations for: (1) failure to pay all overtime wages; (2) non-compliant meal
18 periods and/or failure to make premium payments thereon; (3) non-compliant rest breaks and/or
19 failure to make premium payments thereon; (4) failure to pay minimum wages; (5) failure to pay all
20 wages in a timely manner and upon separation of employment; (6) failure to provide accurate
21 itemized wage statements; (7) failure to keep accurate and complete payroll records; (8) failure to
22 reimburse business expenses; and (9) unfair business practices related to the Settlement Class
23 Members’ Released Claims. This release excludes the release of claims not permitted by law.

24 39. **General Release by Plaintiffs Only.** As of the Effective Date, in addition to the
25 Settlement Class Members’ Released Claims, Plaintiffs individually release, acquit, discharge, and
26 covenant not to sue Defendant and any of the Released Parties for any claim, whether known or
27 unknown, which they have ever had, or hereafter may claim to have, arising during the Class Period
28 relating to or arising out of any aspect of their relationship with Defendant. The release by Plaintiffs

1 includes a waiver of their individual rights under Section 1542 of the Civil Code of the State of
2 California states as follows:

3 **A general release does not extend to claims that the creditor or**
4 **releasing party does not know or suspect to exist in his or her**
5 **favor at the time of executing the release and that, if known by**
him or her, would have materially affected his or her settlement
with the debtor or released party.

6 Accordingly, if the facts relating in any manner to this Settlement Agreement are found hereafter to
7 be other than or different from the facts now believed to be true, the release of claims contained
8 herein shall be effective as to all unknown claims (again, "Plaintiffs' Released Claims"). Plaintiffs'
9 Released Claims exclude the release of claims not permitted by law.

10 40. **Payments under the Settlement.** In consideration of the mutual covenants and
11 promises set forth herein, Defendant agrees to make a payment under this Settlement Agreement for
12 the Gross Settlement Amount of four hundred thousand dollars (\$400,000), in two (2) equal
13 installments as follows: two hundred thousand dollars (\$200,000) to be funded by Defendant within
14 (5) days of Preliminary Approval of the settlement, and the remaining two hundred thousand dollars
15 to be funded one (1) year thereafter (the "Settlement Installment Payments"). All payments from
16 the settlement, as noted below, will be proportionally distributed from each Settlement Installment
17 Payment, with each distribution to be made by the Settlement Administrator within ten (10) calendar
18 days from the date of receipt of each Settlement Installment Payment. The Gross Settlement Amount
19 is non-reversionary, and exclusive of employer-side payroll taxes which shall be paid separately.
20 The Parties further agree, subject to Court approval, that the Gross Settlement Amount shall be
21 apportioned as follows:

22 a. Plaintiffs will apply to the Court for an award of attorneys' fees of no more
23 than thirty-five percent (35%) of the Gross Settlement Amount (*i.e.*, no more than \$140,000) to
24 Class Counsel ("Attorneys' Fees") and for an award of reimbursement of actual litigation costs and
25 expenses up to twenty-two thousand dollars (\$22,000) to Class Counsel ("Attorneys' Costs"). The
26 Attorneys' Fees and Attorneys' Costs (again, in the aggregate, "Attorneys' Fees and Costs") are
27 included in, and will be paid from, the Gross Settlement Amount, and will be distributed
28

1 proportionally from each Settlement Installment Payment. Defendant will not oppose such
2 application.

3 b. Plaintiffs will also apply to the Court for payment to the Settlement
4 Administrator for the costs of notice and settlement administration not to exceed twenty thousand
5 dollars (\$20,000) (again, “Administration Costs”). The Administration Costs are included in, and
6 will be paid from, the Gross Settlement Amount and will be distributed proportionally from each
7 Settlement Installment Payment. Defendant will not oppose such application.

8 c. Plaintiffs will apply to the Court for payment in the amount of up to seven
9 thousand five hundred dollars (\$7,500) to each Plaintiff (again, “Enhancement Payments”), for their
10 services and responsibilities in prosecuting the Lawsuit, for a combined aggregate amount of fifteen
11 thousand dollars (\$15,000). The Enhancement Payments are included in, and will be paid from, the
12 Gross Settlement Amount, and will be distributed proportionally from each Settlement Installment
13 Payment. Defendant will not oppose such application.

14 d. The Net Settlement Amount will be the amount that is available for
15 distribution to Settlement Class Members on a *pro rata* basis based on Workweeks. The Settlement
16 Administrator will determine each Settlement Class Member’s individual Workweeks. The sum of
17 all Settlement Class Members’ individual Workweeks will be the “Total Workweeks.” The Net
18 Settlement Amount will be divided by the Total Workweeks to yield the “Workweek Value.” Each
19 Settlement Class Member’s Individual Settlement Share will be determined by multiplying his or
20 her individual Workweeks by the Workweek Value.

21 e. The net payment of each Settlement Class Member’s Individual Settlement
22 Share (after reduction of Employee Taxes) is referred to as his or her Individual Settlement Payment.

23 41. **No Credit Toward Benefit Plans.** Payments made to Plaintiffs and Settlement Class
24 Members under this Settlement Agreement shall not be utilized to calculate any additional benefits
25 under any benefit plans to which they may be eligible, including, but not limited to, under profit-
26 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
27 plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement
28 will not affect any rights, contributions, or amounts to which Plaintiffs and Settlement Class

1 Members may be entitled under any benefit plans.

2 42. **Taxation of Settlement Proceeds.**

3 a. The Parties agree that each Individual Settlement Share will be divided for
4 taxation purposes as follows: one third ($\frac{1}{3}$) will be considered taxable wages and will be reported as
5 such to each Settlement Class Member on a W-2 Form; one-third ($\frac{1}{3}$) will be considered interest,
6 and one third ($\frac{1}{3}$) will be considered penalties. Interest and penalties will be reported as such to each
7 Settlement Class Member on an IRS Form 1099 (if required).

8 b. The Settlement Administrator shall calculate and remit to applicable taxing
9 authorities sufficient amounts for the Employee and Employer Taxes.

10 c. The Settlement Administrator will issue appropriate tax forms to each
11 Settlement Class Member consistent with the foregoing breakdown.

12 d. All Parties represent that they have not received, and shall not rely on, advice
13 or representations from Class Counsel or Defendant's Counsel regarding the tax treatment of
14 payments under federal, state, or local law, and that no representations have been made to them
15 regarding the taxability of any payments under this Settlement Agreement.

16 e. Class Counsel will be issued an IRS Form 1099 for Attorneys' Fees and Costs
17 awarded by the Court. Except as provided herein, each of the Parties shall bear his, her, their, or its
18 own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the
19 Lawsuit.

20 f. Plaintiffs will be issued an IRS Form 1099 for any Enhancement Payments.
21 The Enhancement Payments payable to Plaintiffs shall be in addition to the Individual Settlement
22 Payment they are contemplated to receive under this Settlement Agreement.

23 43. **Notice Procedure.**

24 a. The Parties shall use CPT Group, Inc. as the Settlement Administrator to
25 distribute the Class Notice, distribute payments under this Settlement Agreement, handle tax
26 reporting, and establish and host a dedicated case settlement website..

27 b. Defendant will provide the Settlement Administrator with the Class List within
28 ten (10) calendar days following the date of Preliminary Approval. The Class List and any other

1 data provided by Defendant to the Settlement Administrator shall be treated as confidential and shall
2 not be used by the Settlement Administrator for any purpose other than as permitted by this
3 Settlement Agreement. The Settlement Administrator will keep the list confidential, use it only for
4 the purposes described herein, and ensure that any other communications with Class Members shall
5 not include the Class Members' Social Security number except for the last four digits.

6 c. The Settlement Administrator shall be responsible for:

7 i. Mailing the Class Notice to the Class Members as directed by the
8 Court;

9 ii. Consulting with counsel for the Parties concerning any relevant
10 issue(s), including (without limitation) the estimated amounts of Individual Settlement Shares and
11 Individual Settlement Payments;

12 iii. Receiving and processing Workweek Disputes and rejecting timely or
13 improper Workweek Disputes;

14 iv. Keeping track of Requests for Exclusion, and rejecting untimely or
15 improper Requests for Exclusion;

16 v. Keeping track of Objections that it receives;

17 vi. Calculation and distribution of payments in accordance with this
18 Settlement Agreement and the Court's orders;

19 vii. Providing weekly status reports to counsel for the Parties, including:
20 (a) the number of Class Notices mailed; (b) the number of Workweek Disputes received; (c) the
21 number of Objections received; and (d) the number of Requests for Exclusion received;

22 viii. No later than twenty-one (21) calendar days before the Final Approval
23 Hearing, preparing and providing to Class Counsel and Defendant's Counsel, for filing with the
24 Court in support of Plaintiffs' motion for final approval of the settlement, a declaration of due
25 diligence setting forth its compliance with its obligations under this Settlement Agreement;

26 ix. Providing Defendant's Counsel the wiring instructions to fund the
27 Gross Settlement Amount, which must be paid by Defendant in the amounts and in accordance with
28 the deadlines set forth in Paragraph 50(a);

- 1 x. Distributing payments due under this Settlement Agreement;
- 2 xi. Issuing a W-2 Form to each Settlement Class Member for the wage
- 3 portion of each Individual Settlement Share, a 1099 Form (if required) to each Settlement Class
- 4 Member for the non-wage portion of each Individual Settlement Share, a 1099 Form to Plaintiffs
- 5 for their Enhancement Awards, a 1099 Form to Class Counsel for the Attorneys' Fees and Costs
- 6 award, and a 1099 Form to the Settlement Administrator for all Administration Costs; and,
- 7 xii. Such other tasks as the Parties mutually agree or the Court orders the
- 8 Settlement Administrator to perform, including responding to questions from Class Members.
- 9 d. Within fifteen (15) calendar days after Preliminary Approval, the Settlement
- 10 Administrator shall mail the Class Notice to all persons shown by Defendant's records to be Class
- 11 Members, as reflected in the Class List, via first class U.S. mail, using the most current mailing
- 12 address available after a National Change of Address search. The Class Notice shall state an estimate
- 13 of each Class Member's respective Individual Settlement Share and the number of Workweeks
- 14 credited to him or her.
- 15 e. Any Class Notice(s) returned to the Settlement Administrator as undelivered
- 16 within fifteen (15) calendar days of initial mailing and bearing a forwarding address shall be re-
- 17 mailed by the Settlement Administrator within three (3) business days following receipt of the
- 18 returned mail. For any such Class Notice returned to the Settlement Administrator without a
- 19 forwarding address, the Settlement Administrator shall first conduct a National Change of Address
- 20 search as required for undeliverable notices, followed by a "skip trace" search to obtain an updated
- 21 address, and shall promptly re-mail the Class Notice to any newly-found address or addresses. The
- 22 Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice returned
- 23 by the Post Office with a forwarding address. It shall be conclusively presumed that those Class
- 24 Members whose re-mailed Class Notice is not returned to the Settlement Administrator as
- 25 undeliverable within five (5) calendar days after re-mailing, received the Class Notice.
- 26 f. Class Counsel shall provide the Court with a declaration from the Settlement
- 27 Administrator confirming that the Class Notice was mailed to all Class Members as required by this
- 28

1 Settlement Agreement, as well as any additional information Class Counsel deems appropriate to
2 provide to the Court, before the Final Approval Hearing.

3 44. **Settlement Payments.** Class Members are not required to submit a claim form to
4 receive a settlement payment.

5 45. **Submission of Workweek Disputes.**

6 a. If any Class Member disputes the Workweeks set forth on the Class Notice
7 during the Class Period (“Workweek Dispute”), the Class Member may submit documentation
8 supporting his or her position by mail to the Settlement Administrator no later than forty-five (45)
9 calendar days from the date the Class Notice is originally mailed by the Settlement Administrator,
10 (“Response Deadline”). Workweek Disputes not postmarked or confirmed received by the
11 Settlement Administrator on or before the Response Deadline will be considered late and may be
12 summarily rejected by the Settlement Administrator, in consultation with Class Counsel and
13 Defendant’s Counsel.

14 b. The Settlement Administrator will notify counsel for the Parties via email. If
15 there is a dispute, the Settlement Administrator will consult with the Parties to determine whether
16 an adjustment is warranted. The Parties and the Settlement Administrator will evaluate the evidence
17 and discuss in good faith how many Workweeks to be credited and in conformity with Paragraph
18 40(d). If the Parties and the Settlement Administrator do not reach agreement, the Court will make
19 the final determination as to how many Workweeks should be credited.

20 46. **Class Member Count Representation.** Defendant’s best estimate of the total
21 number of putative class members for the Class is 384 and Plaintiffs are entering into this Settlement
22 Agreement based on this representation.

23 47. **Opt-Out Procedure.**

24 a. Class Members will have forty-five (45) days until the Response Deadline to
25 mail by first class U.S. mail, with proof of date of submission to be the postmark date, a written
26 request to opt out of the settlement (“Request for Exclusion”). Unless a Class Member submits a
27 timely and valid Request for Exclusion, he or she shall be bound by the terms and conditions of this
28 Settlement Agreement, including the release of claims as set forth herein.

1 b. A Request for Exclusion, in order to be deemed valid, must: (1) be signed by
2 the Class Member; (2) contain the case name and number of the Lawsuit; (3) contain the Class
3 Member's full name, telephone number, mailing address and last four digits of the Class Member's
4 Social Security Number; (4) clearly state that the Class Member wants to opt out of the settlement.;
5 and (5) be postmarked no later than the Response Deadline.

6 c. Upon receipt of any timely Request for Exclusion, the Settlement
7 Administrator shall review the request to verify the information contained therein and confirm that
8 the request complies with the requirements of this Settlement Agreement.

9 d. Any Class Member who fails to submit via first class U.S. mail a timely,
10 complete, and valid Request for Exclusion shall be barred from opting out of the settlement. The
11 Settlement Administrator shall not review or consider any Request for Exclusion postmarked after
12 the Response Deadline. Under no circumstances shall the Settlement Administrator have the
13 authority to extend the Response Deadline for Class Members to file a Request for Exclusion, except
14 as ordered by the Court or mutually agreed by the Parties.

15 e. Plaintiffs agree not to request to be excluded from the settlement.

16 48. **Defendant's Right To Cancel.**

17 If more than five percent of the Class Members submit a timely and valid Request for
18 Exclusion, Defendant shall have the sole and absolute discretion to withdraw from this Settlement
19 Agreement within ten (10) calendar days after the Response Deadline by providing written notice
20 of such withdrawal to Class Counsel. In the event that Defendant elects to withdraw as set forth in
21 this provision, the withdrawal shall have the same effect as a termination of this Settlement
22 Agreement; the settlement shall become null and void and have no further force or effect. If
23 Defendant exercises its option to terminate this settlement pursuant to this section, it shall pay all
24 Administration Costs incurred up to the date and as a result of the termination.

25 49. **Objections to Settlement.**

26 a. Any Settlement Class Member may object to the settlement by mailing a
27 written objection ("Objection") to the Settlement Administrator. To be timely, Objections must be
28 mailed to the Settlement Administrator, postmarked on or before the Response Deadline.

1 b. An Objection must: (1) be signed by the Class Member; (2) contain the case
2 name and number of the Lawsuit; (3) contain the Class Member’s full name, telephone number, and
3 mailing address; (4) clearly state the factual and legal basis for objecting to the settlement; (5)
4 indicate whether the Class Member is represented by counsel and identify said counsel; and (6)
5 indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be
6 heard at the Final Approval Hearing. The Settlement Administrator will provide the Parties’ counsel
7 with any objections received and also attach the objections as exhibits to its declaration regarding
8 due diligence that will be filed with the Court in advance of the Final Approval Hearing.

9 c. Settlement Class Members have the right to appear and have their Objections
10 heard or offer comments at the Final Approval Hearing, either in person or through a lawyer retained
11 at their own expense. Class Counsel will not represent any Settlement Class Members with respect
12 to such Objections.

13 50. **Settlement Proceeds Distribution Deadlines.**

14 a. Defendant agrees to make a payment under this Settlement Agreement for
15 the Gross Settlement Amount of four hundred thousand dollars (\$400,000), in two (2) equal
16 installments as follows: two hundred thousand dollars (\$200,000) to be funded by Defendant within
17 five (5) days of Preliminary Approval of the settlement, and the remaining two hundred thousand
18 dollars (\$200,000) to be funded one (1) year thereafter (again, the “Settlement Installment
19 Payments”). If the Gross Settlement Amount increases pursuant to Paragraph 46, then the amount
20 to be paid by Defendant will proportionally increase.

21 b. Prior to disbursement of any funds from a Settlement Installment Payment,
22 the Settlement Administrator will provide a disbursement summary of the calculations for the
23 proportional distribution of the Enhancement Payments to Plaintiffs, payment of Attorneys’ Fees
24 and Costs to Class Counsel, Administration Costs payment, and payment of Individual Settlement
25 Payments to Settlement Class Members for review and approval by Class Counsel and Defendant’s
26 Counsel.

27 c. No later than ten (10) calendar days after Defendant fully funds each
28 Settlement Installment Payment, the Settlement Administrator shall distribute payments

1 proportionally (i.e. one-half of approved amounts) from the Settlement Installment Payment, in
2 accordance with this Settlement Agreement and the Court’s orders, as follows: (i) payment of the
3 Enhancement Payments to Plaintiffs; (ii) payment of Individual Settlement Payments to Settlement
4 Class Members; (iii) payment of Attorneys’ Fees and Costs to Class Counsel; and (iv) payment of
5 Administration Costs to the Settlement Administrator.

6 d. If Defendant fails to timely make either the first or second Settlement
7 Installment Payment, Class Counsel and/or the Settlement Administrator shall send counsel for
8 Defendant written notice of the default and demand to cure (hereinafter referred to “Notice of
9 Default”). Defendant shall have ten (10) calendar days from the postmark date of the Notice of
10 Default to cure the default. If Defendant does not cure within this time period by paying the full
11 installment payment due and in default, then Class Counsel shall send counsel for Defendant written
12 notice of the breach (hereinafter referred to as “Notice of Breach”). The Notice of Breach shall
13 continue the deadline for the installment payment on the condition that interest on the amount of the
14 installment payment in default accrues at the rate of ten percent (10%) simple interest per annum,
15 which interest will begin accruing on the date of the installment payment that is in default was
16 originally due. In the event of a default of any payment under this Settlement Agreement,
17 Defendant, agrees to pay Class Counsel all reasonable costs of collection and enforcement of this
18 Settlement Agreement, including attorneys’ fees and costs in addition to the Attorneys’ Fees and
19 Costs.

20 e. Settlement checks will be valid for a period of one hundred and eighty (180)
21 calendar days from the date of issuance, and after this time period, any uncashed check(s) will be
22 cancelled, and the funds associated with such cancelled checks will be tendered to the Controller of
23 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
24 sections 1500 *et seq.*, for the benefit of that Class Member. The Parties agree that this disposition
25 results in no “unpaid residue” under California Code of Civil Procedure section 384, as the entire
26 Net Settlement Amount will be paid out to Class Members. Therefore, Defendant will not be
27 required to pay any interest on said amount. In the event that a Class Member’s payment is tendered
28

1 to the Controller of the State of California, the terms of the final judgment and the Release of Claims
2 will nevertheless be binding upon that Class Members.

3 f. The remittance of both Court ordered and approved Settlement Installment
4 Payments, under this Settlement Agreement, to the Settlement Administrator, shall constitute the
5 full and complete discharge of the entire obligation of Defendant under this Settlement Agreement.

6 g. No person shall have any claim against the Settlement Administrator,
7 Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiffs or
8 Defendant based upon the distribution of payments made in accordance with this Settlement
9 Agreement or further orders of the Court.

10 51. **Binding Effect.** Subject to Final Approval, all Settlement Class Members shall be
11 bound by this Settlement Agreement, the contemplated Final Approval Order and Judgment, the
12 release of Settlement Class Members' Released Claims, and shall be enjoined from pursuing, or
13 seeking to reopen, Settlement Class Members' Released Claims against the Released Parties.

14 52. **Provisional Approval of Settlement.** After execution of this Settlement Agreement,
15 Plaintiffs shall promptly file a motion in the Lawsuit requesting Preliminary Approval of the
16 settlement consistent with the terms of this Settlement Agreement. Defendant shall not oppose the
17 Motion for Preliminary Approval of the settlement so long as the motion and supporting papers are
18 consistent with the terms of this Settlement Agreement. Defendant may submit a supporting
19 declaration to provide the Court with financial information and/or documents (which can be sealed
20 pursuant to California Rules of Court, Rule 2.550 or in camera). By way of the motion, the Court
21 will be requested to enter a Preliminary Approval Order that:

22 a. Preliminarily approves this Settlement Agreement and the Settlement
23 Installment Payment plan;

24 b. Conditionally certifies the Class, for purposes of settlement;

25 c. Preliminarily appoints Plaintiffs as representatives of the Class for settlement
26 purposes;

27 d. Preliminarily appoints CounselOne, PC and Lawyers *for* Justice, PC as Class
28 Counsel for the Class for settlement purposes;

1 e. Approves and appoints CPT Group, Inc. as the Settlement Administrator to
2 administer the settlement as required by this Settlement Agreement;

3 f. Approves the form of the Class Notice and requires that it be sent to Class
4 Members by first class U.S. mail;

5 g. Approves the Notice Plan;

6 h. Schedules the Final Approval Hearing; and

7 i. Approves the procedure and deadlines (including the Response Deadline) for
8 Class Members to submit Requests for Exclusion, Objections, and Workweek Disputes.

9 53. **Non-Interference with Settlement Administration.** The Parties and their counsel
10 agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests
11 for Exclusion or Objections to the settlement or to appeal from the Final Approval Order and
12 Judgment.

13 54. **Final Approval Order and Judgment.** Plaintiffs will request, and Defendant will
14 concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order
15 and Judgment drafted by Plaintiffs in the form that is consistent with this Settlement Agreement and
16 subject to prior review and approval by Defendant. Plaintiffs will request that the Final Approval
17 Order and Judgment find that this settlement is fair, just, equitable, reasonable, adequate and in the
18 best interests of the Class, enter judgment in accordance with California Rules of Court 3.769, and
19 require the Parties to carry out the provisions of this Settlement Agreement.

20 55. **Voiding of Settlement Agreement if Settlement Not Finalized or for Failure to**
21 **Satisfy Conditions.**

22 a. The Court may award less to Plaintiffs, Class Counsel, and/or the Settlement
23 Administrator than is provided for herein, without impacting the validity and enforceability of this
24 Settlement Agreement.

25 b. If for any reason the settlement set forth in this Settlement Agreement is
26 terminated as provided under this Paragraph or Paragraph 48 or does not otherwise become final:

27 i. The settlement shall be null and void and the orders and judgment to
28 be entered pursuant to this Settlement Agreement shall be vacated; and the Parties will be returned

1 to the status quo as of September 24, 2021, with respect to the Lawsuit and Plaintiffs' class action
2 claims, as if the Parties had never entered into this Settlement Agreement.

3 ii. This Settlement Agreement and all negotiations, court orders and
4 proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto and
5 Class Members, whom shall be restored to their respective positions existing prior to the execution
6 of this Settlement Agreement, and evidence relating to this Settlement Agreement and all
7 negotiations shall not be admissible or discoverable in the litigation and/or Lawsuit or otherwise.

8 iii. Defendant will not have waived, and instead expressly reserves, its
9 rights to challenge the continuing propriety of class certification for any purpose.

10 iv. Plaintiffs and Class Counsel will not have waived, and instead
11 expressly reserve, their rights to move for class certification.

12 v. To the extent one exists, the Preliminary Approval Order shall be
13 vacated in its entirety and neither this Settlement Agreement, the Preliminary Approval Order, nor
14 any other document in any way relating to any of the foregoing, shall be relied upon, referred to, or
15 used in any way for any purpose in connection with any further proceedings in this or any related
16 action, including class certification proceedings.

17 56. **No Publicity.** The Parties and their counsel will not initiate nor respond to public
18 relations or media inquiries about the settlement except as required by the settlement approval
19 process. In addition, the Parties and their counsel agree that they will not engage in any advertising
20 or distribute any marketing materials relating to the settlement of the Lawsuit in any manner that
21 identifies Defendant, including but not limited to any postings on any websites maintained by Class
22 Counsel.

23 57. **Notices.** All notices, requests, demands, and other communications required or
24 permitted to be given pursuant to this Settlement Agreement to the Parties shall be in writing, and
25 shall be delivered by first class U.S. mail through counsel, as follows:

26 For Plaintiffs and the Class:

27 Anthony J. Orshansky
28 Jennifer L. Connor
 CounselOne, PC

1 9301 Wilshire Boulevard Suite 650
2 Beverly Hills, California 90210

3 For Defendant:

4 John C. Kirke
5 Yen P. Chau
6 Donahue Fitzgerald LLP
7 1999 Harrison Street, Suite 2600
8 Oakland, California 94612

9 58. **Modification in Writing.** This Settlement Agreement may be altered, amended,
10 modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and
11 approved by the Court. This Settlement Agreement may not be amended, altered, modified or
12 waived, in whole or in part, orally.

13 59. **Ongoing Cooperation.** Plaintiffs and Defendant and each respective counsel shall
14 execute all documents and perform all acts necessary and proper to effectuate the terms of this
15 Settlement Agreement. The executing of documents must take place prior to the Final Approval
16 Hearing.

17 60. **Binding on Successors.** This Settlement Agreement shall be binding and shall inure
18 to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs,
19 and legal representatives.

20 61. **Entire Agreement.** This Settlement Agreement constitutes the full, complete, and
21 entire understanding, agreement, and arrangement between the Parties with respect to the settlement
22 of the Lawsuit and Release of Claims. This Settlement Agreement supersedes any and all prior oral
23 or written understandings, agreements, and arrangements between the Parties with respect to the
24 settlement of the Lawsuit and Release of Claims. Except as to those set forth and included expressly
25 in this Settlement Agreement, there are no other agreements, covenants, promises, representations,
26 or arrangements between the Parties with respect to the settlement of the Lawsuit.

27 62. **Execution in Counterparts.** This Settlement Agreement may be signed in one or
28 more counterparts and electronic signatures are acceptable. All executed copies of this Settlement
Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have
the same force and effect and shall be as legally binding and enforceable as the original.

1 63. **Captions.** The captions and section numbers in this Settlement Agreement are
2 inserted for the reader’s convenience and in no way define, limit, construe, or describe the scope or
3 intent of the provisions of this Settlement Agreement.

4 64. **Governing Law.** This Settlement Agreement shall be interpreted, construed,
5 enforced, and administered in accordance with the laws of the State of California, without regard to
6 conflict of law rules.

7 65. **Reservation of Jurisdiction.** Notwithstanding entry and filing of the Final Approval
8 Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing
9 the terms of this Settlement Agreement.

10 66. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
11 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement shall not be
12 construed more strictly against one Party than another merely by virtue of the fact that it may have
13 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
14 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
15 Agreement.

16 67. **Representation by Counsel.** The Parties acknowledge that they have been
17 represented by counsel throughout all negotiations that preceded the execution of this Settlement
18 Agreement and that this Settlement Agreement has been executed with the consent and advice of
19 counsel. Further, Plaintiffs and Class Counsel warrant and represent, to their knowledge, that there
20 are no liens on this settlement.

21 68. **Warranties and Representations.** With respect to themselves, each of the Parties
22 to this Settlement Agreement and/or their agents or counsel represent, covenant, and warrant that
23 (a) they have full power and authority to enter into and consummate all transactions contemplated
24 by this Settlement Agreement and have duly authorized the execution, delivery, and performance of
25 this Settlement Agreement and (b) the person executing this Settlement Agreement has the full right,
26 power, and authority to enter into this Settlement Agreement on behalf of the Party for whom
27 he/she/it has executed this Settlement Agreement, and the full right, power, and authority to execute
28

1 any and all necessary instruments in connection herewith, and to fully bind such Party to the terms
2 and obligations of this Settlement Agreement.

3
4 **IT IS SO AGREED:**

5
6 Dated: 03 / 11 / 2022, 2022




Plaintiff Efen Gonzalez

7
8
9 Dated: 03 / 14 / 2022, 2022



Plaintiff Jason Hartman

10
11
12 Dated: 4/25/2022, 2022

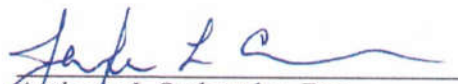


Name: Timothy Archer
Title: President/CEO

15 On Behalf of Defendant Trimon, Inc., doing business
16 as Monument Car Parts and Superior Auto Parts
17 Warehouse


18 **APPROVED AS TO FORM**

19
20 Dated: March 11, 2022



Anthony J. Orshansky, Esq.
Jennifer L. Connor, Esq.
CounselOne, PC

21
22
23
24 Dated: April 26, 2022



John C. Kirke, Esq.
Yen P. Chau, Esq.
Donahue Fitzgerald LLP
Attorneys for Defendant