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Attorneys for Plaintiff ANTHONY LINGLE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 26, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021
FAC Filed: July 22, 2022
SAC Filed: October 7, 2022
Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 26, 2024, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Courtroom 3, 15th Floor, of the above-entitled Court, Plaintiff Anthony Lingle,
4 individually and on behalf of all other similarly situated individuals, hereby moves for entry of an Order
5 for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Anthony Lingle as class representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorneys General Act
12 settlement, in the amount of \$600,000, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of Apex Class Action, LLC, as the Settlement
14 Administrator;
- 15 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
16 the total amount of \$140,000, 75% of which will be paid to the Labor and Workforce
17 Development Agency and 25% of which will be paid to PAGA Members;
- 18 7. Approving as to form and content the Notice of Class Action Settlement, which provides
19 Class Members information regarding the settlement, their ability to opt out of, or object to,
20 the class action settlement and which provides instruction on how to dispute an individual's
21 settlement allocation under the proposed settlement agreement;
- 22 8. Approving the proposed procedures to notify the class and determining that the proposed
23 notification procedures and process complies with Class Members' due process rights and
24 directing the Notice of Class Action Settlement to be sent by first class mail to Class
25 Members;
- 26 9. Directing Defendant to report the Class Data, to the Settlement Administrator to administer
27 the settlement proceeds;
- 28

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be donated to Salvation Army Sacramento Metro under the doctrine of *cy pres*; and

5 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
6 implementation schedule, which is filed herewith and incorporated by reference.

7 This motion is being made pursuant to Federal Rule of Civil Procedure 23 and California Labor
8 Code section 2699(l), on the grounds that the proposed class action and Private Attorneys General Act
9 settlement is fair, reasonable, and adequate as to all Class Members and should be approved by the
10 Court. This motion will be based on the notice of motion, memorandum of points and authorities, the
11 Declaration of Justin P. Rodriguez, the Declaration of Anthony Lingle, exhibits, the record and files of
12 this case, and any further oral or documentary evidence introduced at the hearing of this motion.

13 Additionally, and pursuant to Hon. Kimberly J. Mueller's Civil Standing Order ¶ 4(A)(a), the
14 undersigned certifies that the parties have met and conferred on the issues addressed in this motion and
15 agree that it is appropriate to be filed based on the Federal Rules of Civil Procedure, California Labor
16 Code, and related case law requiring Court review and approval of proposed Class and PAGA
17 settlements.

18
19
20 Dated: November 22, 2023

Shimoda & Rodriguez Law, PC

21
22 By: /s/ Justin P. Rodriguez
23 Galen T. Shimoda
24 Justin P. Rodriguez
25 Renald Konini
26 Attorneys for Plaintiff
27
28

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CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
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PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

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TABLE OF CONTENTS

I.	Introduction And Opening Summary Of Argument.....	1
II.	Procedural And Litigation History	2
III.	Investigation And Discovery Conducted.....	2
IV.	Negotiation And Proposed Settlement	3
	a. Plaintiff and Defendant Engaged in Extensive Arm’s Length Negotiations.....	3
	b. The Terms of the Agreement.....	3
	c. Allocation of Settlement Funds	6
V.	Argument	7
	a. Class Action Settlements and PAGA Settlements are Subject to Court Review and Approval.....	7
	b. The Agreement Should Be Preliminarily Approved Because The Terms of The Agreement Are Fair, Reasonable and Adequate.....	7
	i. The Class Representative and Class Counsel Adequately Represented the Class.....	8
	ii. The Settlement is a Result of Serious, Informed, Non-Collusive Arm’s Length Negotiations Between the Parties.....	8
	iii. The Relief Provided For the Class Is Adequate	9
	A. The Settlement Is Adequate In Light of Potential Costs, Risks, and Delays	9
	B. Plaintiff’s Method of Distributing Relief Will Be Effective	10
	C. The Relief Is Adequate In Light of The Proposed Award of Attorneys’ Fees and Timing of Payment	11
	iv. The Settlement Treats Class Members Equitably Relative to Each Other	12
	c. Preliminary and Conditional Approval of the Settlement Class is Appropriate	12
	i. Numerosity.....	13
	ii. Commonality, Typicality, and Predominance.....	13
	iii. The Adequacy Requirement is Met.....	14
	iv. Superiority.....	16
VI.	Conclusion	16

1 **TABLE OF AUTHORITIES**

2 **CALIFORNIA CASES**

3 *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal.4th 1004 (2012) 15

4 *In re Microsoft I-V Cases*, 135 Cal.App.4th (2006) 6

5 *Lubin v. Wackenhut Corp.*, 5 Cal.App.5th 926 (2016) 14

6 *Nordstrom Com. Cases*, 186 Cal.App.4th 576 (2010) 4

7 **CALIFORNIA STATUTES**

8 Cal. Labor Code section 2699 7

9 Cal. Labor Code section 2699.3..... 2

10 **FEDERAL CASES**

11 *Alba v. Papa John's USA*, 2007 U.S. Dist. LEXIS 28079 (C.D. Cal. 2007)..... 13

12 *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) 12

13 *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997) 16

14 *Amgen, Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184 (2013) 12

15 *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) 10

16 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) 10

17 *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) 10

18 *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017) 10

19 *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 (N.D. Cal. 2011) 5

20 *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514 (S.D. Cal. 2017) 5

21 *Dirks v. Layton Brokerage Co. of St. Louis, Inc.*, 105 F.R.D. 125 (D. Minn. 1985)..... 16

22 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970 (9th Cir. 2011) 12

23 *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801 (E.D. Cal. 2012)..... 5

24 *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012)..... 5

25 *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043 (S.D. Cal. 2012) 10

26 *Gomez v. Rossi Concrete, Inc.*, 270 F.R.D. 579 (S.D. Cal. 2010) 14

27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998) 13

28 *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009) 5

1	<i>In re Conagra Foods, Inc.</i> , 90 F.Supp.3d 919 (C.D. Cal. 2015)	13
2	<i>In re Hyundai and Kia Fuel Economy Litigation</i> , 926 F.3d 539 (9th Cir. 2019)	7
3	<i>In re Omnivision Technologies, Inc.</i> , 559 F.Supp.2d 1036 (2007)	9
4	<i>In re Scorpion Techs., Inc. Sec. Litig.</i> , 1994 U.S. Dist. LEXIS 21413 (N.D. Cal. 1994)	13
5	<i>Jack v. Hartford Fire Ins. Co.</i> , 2011 U.S. Dist. LEXIS 118764 (S.D. Cal. 2011)	5
6	<i>Jennings v. Open Door Marketing, LLC</i> , 2018 WL 4773057 (N.D. Cal. 2018)	4
7	<i>Jimenez v. Allstate Ins. Co.</i> , 2012 U.S. Dist. LEXIS 65328 (C.D. Cal. 2012)	13, 14
8	<i>Junkersfeld v. Med. Staffing Sols., Inc.</i> , 2022 WL 2318173 (E.D. Cal. 2022)	4
9	<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811 (9th Cir. 2012)	12
10	<i>Leyva v. Medline Industries, Inc.</i> , 716 F.3d 510 (9th Cir. 2013)	14, 16
11	<i>Lilly v. Jamba Juice Co.</i> , 308 F.R.D. 231 (N.D. Cal. 2014)	13
12	<i>Magadia v. Wal-Mart Assocs.</i> , 2018 U.S. Dist. LEXIS 4715 (N.D. Cal. 2018)	14
13	<i>Martinez v. Knight Transportation, Inc.</i> , 2023 WL 2655541 (E.D. Cal. 2023)	7
14	<i>Moore v. Fitness Int’l, LLC</i> , 2014 U.S. Dist. LEXIS 8358 (S.D. Cal. 2014)	5
15	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615 (9th Cir. 1982)	9
16	<i>Pena v. Taylor Farms Pac., Inc.</i> , 305 F.R.D. 197 (E.D. Cal. 2015)	14
17	<i>Rannis v. Recchia</i> , 380 F. App’x 646 (9th Cir. 2010)	11
18	<i>Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)</i> , 779 F.3d 934 (9th Cir. 2015)	15
19	<i>Rica P. John Fund, Inc. v. Halliburton Co.</i> , 563 U.S. 804 (2011)	13
20	<i>Romero v. Producers Dairy Foods, Inc.</i> , 235 F.R.D. 474 (E.D. Cal. 2006)	13
21	<i>Ruch v. AM Retail Grp., Inc.</i> , 2016 WL 5462451 (N.D. Cal. 2016)	5
22	<i>Schiller v. David’s Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. 2012)	10
23	<i>Sciortino v. PepsiCo, Inc.</i> , 2016 U.S. Dist. LEXIS 83937 (N.D. Cal. 2016)	12
24	<i>Silber v. Mabon</i> , 18 F.3d 1449 (9th Cir. 1994)	10
25	<i>Singer v. Becton Dickinson & Co.</i> , 2010 U.S. Dist. LEXIS 53416 (S.D. Cal. 2010)	5
26	<i>Snipes v. Dollar Tree Distrib.</i> , 2017 U.S. Dist. LEXIS 195460 (E.D. Cal. 2017)	14
27	<i>Syed v. M-I, L.L.C.</i> , 2017 U.S. Dist. LEXIS 24880 (E.D. Cal. 2017)	5
28	<i>Tierno v. Rite Aid Corp.</i> , 2006 U.S. Dist. LEXIS 66436 (N.D. Cal. 2006)	13

1	<i>United Steel, Paper & Forestry, Rubber, Mfg. v. ConocoPhillips Co.,</i>	
2	593 F.3d 802 (9th Cir. 2010).....	14
3	<i>Walsh v. CorePower Yoga LLC</i> , 2017 U.S. Dist. LEXIS 163991 (N.D. Cal. 2017).....	10
4	<i>Wixon v. Wyndham Resort Dev. Corp.</i> , 2009 U.S. Dist. LEXIS 100451 (N.D. Cal. 2009).....	12, 13
5	<i>Wright v. Linkus Enters.</i> , 259 F.R.D. 468 (E.D. Cal. 2009).....	10
6	<i>Yanez v. HL Welding, Inc.</i> , 2022 WL 788703 (S.D. Cal. 2022).....	11
7	FEDERAL STATUTES AND OTHER AUTHORITIES	
8	Fed. R. Civ. Proc. 23	8, 12, 16

1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Anthony Lingle (“Plaintiff”) seeks preliminary approval of a wage and hour class action
3 and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$600,000. *See*
4 *generally* Exhibit A (Class and Representative Action Settlement Agreement and Release
5 [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated
6 employees who worked for Defendant Centimark Corporation, (“Defendant”) (Plaintiff and Defendant
7 are sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative
8 Complaint). There are approximately 241 Class Members.

9 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to pay minimum wages,
10 failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage
11 statements, failed to timely pay final wages, failed to pay all owed paid sick time, and engaged in unfair
12 competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”),
13 ¶¶ 2, 9. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these
14 violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency
15 [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s allegations in their
16 entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also
17 denied that this case is appropriate for class certification other than for purposes of settlement. *See id.*
18 However, subject to Court approval, the Parties have been able to compromise and settle all asserted
19 claims as a result of extensive investigations, document and data exchanges, and extended negotiations.
20 *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and
21 adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed
22 knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-10; Declaration of Anthony Lingle
23 (“Decl. Lingle”) ¶ 10.

24 It is well within the discretion of this Court to grant preliminary and conditional approval of the
25 proposed settlement, which satisfies all of the criteria for preliminary settlement approval under federal
26 law, and preliminarily and conditionally certify the settlement class. Accordingly, Plaintiff requests that
27 the Court: (1) preliminarily approve the proposed settlement class; (2) preliminarily approve the
28 proposed Agreement (Exhibit A) (3) set dates for distribution of the Notice of Class Action Settlement

(Exhibit F); (4) set a final approval hearing and briefing schedule; (5) set a briefing schedule for Plaintiff's Motion for Attorneys' Fees and Costs, Settlement Administrator Costs, and Class Representative Enhancement Award that will be held concurrently with the final approval hearing; and (6) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint against Defendant in Sacramento County Superior Court on approximately December 2, 2021. Defendant removed the action to federal court on or about August 23, 2022. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Thereafter, Plaintiff filed a First Amended Class Action Complaint on approximately July 22, 2022, to include the PAGA claim. *See id.* After removal, Plaintiff filed a Second Amended Complaint on October 7, 2022, to address several issues Defendant raised in meet and confer discussions regarding the sufficiency of the pleadings. *See id.* However, disputes remained and Defendant filed a partial motion to dismiss and strike, which the Court granted in part and denied in part. Prior to further amending the operative complaint, the Parties agreed to mediate and stay the litigation pending mediation. *See id.* The Parties were able to resolve the claims at mediation. As such, the Second Amended Complaint remains the operative pleading in this matter. *See* Exhibit B. *See id.*

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated the issues affecting certification, the merits of the claims, and potential damages for such claims. *See id.* at ¶¶ 6-10; Decl. Lingle, ¶¶ 3, 5-7. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Lingle, ¶¶ 2, 5. The Parties engaged in written discovery, which involved a substantial amount of time meeting and conferring on discovery disputes. *See* Decl. Rodriguez, ¶ 7. The formal discovery, as well as the informal discovery conducted in connection with mediation, included an exchange of documents and review of a representative sample of Class Members' wage and hour data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations

1 applicable to the asserted claims. *See id.* Several hundred pages of documents were produced in
2 discovery as well as numerous electronic payroll and time card report excel files, which contained a
3 total of more than 104,000 rows of data. In conducting the merits and damages analysis, Plaintiff had
4 to cross reference data from several different spreadsheets at a time over the course of the statutory
5 period to appropriately and accurately analyze the information. The discovery covered all aspects of
6 the asserted claims, including certification issues, merits issues, damages, the scope and configuration
7 of Class Members, the content and implementation of the wage and hour policies at issue, and issues
8 relating to manageability concerns at trial, among other relevant areas. *See id.* The information
9 allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's
10 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*
11 Decl. Rodriguez, ¶¶ 7, 9-10.

12 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

13 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

14 The final settlement occurred only after extended, arm's length negotiations. Over the course of
15 approximately three (3) years, Plaintiff has been investigating the claims and discussing with
16 Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The
17 Parties exchanged substantial amounts of information and legal analysis in connection with these
18 discussions. *See id.* It was only after these extended discussions, which included a full day mediation
19 with Lou Marlin, Esq., that the Parties were able reach a resolution on the essential terms of the
20 Agreement, which only occurred after a mediator's proposal to bridge the Parties' opposing positions.
21 *See id.* After reaching resolution on the essential terms at mediation, the Parties continued to negotiate
22 additional terms relevant to settlement administration and notice procedures, reaching agreement on all
23 terms on November 20, 2023. *See id.* at ¶¶ 4, 8; *see, generally*, Exhibit A.

24 **b. The Terms of the Agreement**

25 1. Class Members will include all non-exempt employees, excluding any individuals
26 employed solely as office or administrative staff, who have or continue to work for Defendant in
27 California, and who have not signed, or opted out of, an arbitration agreement, during the Class
28 Settlement Period (July 11, 2018, to November 19, 2023). PAGA Members will include all non-exempt

1 employees, excluding any individuals employed solely as office or administrative staff, who have or
2 continue to work for Defendant in California during the PAGA Settlement Period (May 17, 2021, to
3 November 19, 2023). *See* Exhibit A, at pgs. 2 & 7, ¶¶ 5, 7, 24, 27.

4 2. Defendant will pay the Gross Settlement Amount of \$600,000, which is exclusive of the
5 employer's share of payroll taxes. *See id.* at pg. 5, ¶ 16. No portion of the Gross Settlement Amount
6 will revert to Defendant. *See id.* at pg. 21, ¶ 56. PAGA Members will still be paid their share of the
7 PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at pgs. 19-20, ¶
8 53.e.

9 3. Up to \$10,000 will be paid to Plaintiff as a Class Representative Enhancement Award.
10 This amount will be in addition to any amount Plaintiff may be entitled to as a Class Member and
11 PAGA Member under the terms of the Agreement. *See id.* at pgs. 3, 21, & 26, ¶¶ 9, 56, 60.

12 4. Subject to Court approval, the Parties have selected Apex Class Action, LLC, to act as
13 the Settlement Administrator, who has provided a maximum cost estimate of \$7,766.25. *See* Exhibit D
14 at pg. 2 (Apex Class Action, LLC, Quote); Exhibit A, at pg. 12, ¶ 41; Decl. Rodriguez, ¶ 22.

15 5. The Parties agree that \$140,000 of the Gross Settlement Amount shall be allocated to
16 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
17 the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members. *See* Exhibit A at pgs. 5-7,
18 ¶¶ 17, 20, 26. Given the risk to proving the claims on the merits, the derivative nature of the penalties,
19 the efforts by Defendant to maintain compliant policies and take corrective action, the presence of what
20 may likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award,
21 Plaintiff believes the \$140,000 PAGA Payment allocation represents a meaningful settlement aimed at
22 deterring non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 6-10; *see also*
23 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of
24 PAGA claims based on their being disputed and being part of a class settlement which was evaluated
25 based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL
26 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from
27 .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018)
28 (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);

1 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA
2 settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of
3 total estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1
4 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v.*
5 *Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
6 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*,
7 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000
8 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010)
9 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S.
10 Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000
11 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
12 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at
13 \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.
14 LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000
15 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in
16 PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
17 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of
18 \$6.9 million common-fund settlement).

19 6. The Parties agree that up to one-third (1/3) of the Gross Settlement Amount (\$200,000)
20 will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not
21 oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at pg. 26, ¶ 61.
22 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
23 approved by the Court in an amount not to exceed \$15,000. *See id.*; *see also* Exhibit E (Plaintiff's
24 Itemized Costs). The proposed notice to be sent to Class Members will state this information. *See*
25 Exhibit F at pg. 3.

26 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
27 Representative Enhancement Award, and attorney's fees and costs that are not ultimately awarded by
28 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class

Members on a pro rata basis as set forth in the Agreement. See Exhibit A, at pgs. 26 & 28, ¶¶ 60-61, 65. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. See *id.* at pgs. 5-6, ¶¶ 16, 21.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. See Exhibit A at pgs. 7-8, 16, & 19, ¶¶ 28, 35, 49, 53.e. PAGA Members will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. See *id.* at pgs. 10, 16, & 20, ¶¶ 36, 50, 53.e.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or PAGA Members that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated to Salvation Army Sacramento Metro under the doctrine of *cy pres*. See Exhibit A at pg. 28, ¶ 64. Because the Agreement provides for all funds such that there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiary promotes the law consistent with the objectives and purposes underlying the lawsuit as it is a non-profit aimed at assisting individuals obtain gainful employment through workforce development and unemployment services. See *id.* at 722-724; see also Decl. Rodriguez, ¶¶ 25-26.

c. Allocation of Settlement Funds

Payment to Class Members and PAGA Members of their Individual Settlement Payment will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, Class Representative Enhancement Award, the Settlement Administrator Costs, and the PAGA Payment. Each Class Member's proportionate share will be determined by dividing the Net Settlement Amount by the Workweek Total of all Class Members to get a Workweek Value. Then each Participating Class Members workweeks will be multiplied by the Workweek Value to establish their Individual Settlement Payment. See Exhibit A at pgs. 21 & 24, ¶¶ 56, 58(i). Each PAGA Member's share of the PAGA Payment will be determined by dividing the 25% portion of the PAGA Payment, *i.e.* the aggregate of all Individual PAGA Payments, by the total number of pay periods worked by PAGA Members during the PAGA Settlement Period to get a

per pay period value. Then each PAGA Member will have their respective number of pay periods worked during the PAGA Settlement Period multiplied by the per pay period value to arrive at their Individual PAGA Payment. *See id.* at pg. 25, ¶ 59. Twenty percent (20%) of Class Members' Individual Settlement Payment will be allocated for payment of disputed wages and eighty percent (80%) for disputed statutory penalties and interest. *See id.* at pgs. 26-27, ¶ 62. 100% of PAGA Members' Individual PAGA Payments will be allocated as penalties. *See id.*

V. ARGUMENT

a. Class Action Settlements and PAGA Settlements are Subject to Court Review and Approval

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Fed. R. Civ. Proc. 23(e). Similarly, settlements under the PAGA require Court review and approval. *See* Cal. Lab. Code § 2699(l). Preliminary approval is appropriate when it has been shown that the Court will likely be able to (1) approve the proposed settlement under Rule 23(e)(2) as well as (2) certify the class. "Approval under Rule 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminarily approval and then, after notice is given to class members, whether final approval is warranted." *Martinez v. Knight Transportation, Inc.*, 2023 WL 2655541, at *6 (E.D. Cal. 2023). "Under Rule 23(e)(1), the court must direct notice to all class members who would be bound by the settlement proposal if the parties show that 'the court will likely be able to:' (i) approve the proposal under Rule 23(e)(2)'s fair, reasonable, and adequate standard; and (ii) certify the proposed class." *Martinez*, 2023 WL 2655541 at *6; Fed. R. Civ. P. 23(e)(1). There is a "strong judicial policy that favors settlement, particularly where complex class action litigation is concerned." *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 556 (9th Cir. 2019).

b. The Agreement Should Be Preliminarily Approved Because The Terms of The Agreement Are Fair, Reasonable and Adequate

A Court may grant preliminary approval of a proposed class settlement if it finds the settlement is "fair, reasonable, and adequate after considering whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the

1 relief provided for the class is adequate; and (4) the proposal treats class members equitably relative to
2 each other. *See* Fed. R. Civ. Proc. 23(e)(2).

3 **i. The Class Representative and Class Counsel Adequately Represented the Class**

4 Plaintiff's counsel has extensive experience and has been found by several Courts to be adequate
5 class counsel in numerous complex wage and hour class actions. *See* Decl. Rodriguez ¶¶ 13-19.
6 Because Plaintiff shares a common nexus of legal and factual issues with Class Members, he has the
7 same interest in pursuing the most beneficial result and has assisted his counsel in obtaining this result
8 over a period of nearly three (3) years. *See* Decl. Rodriguez, ¶¶ 7-8; Decl. Lingle, ¶¶ 3-7. Plaintiff and
9 his counsel do not have any conflicts with class members. Decl. Rodriguez, ¶ 3; Decl. Lingle, ¶¶ 2-7.
10 Plaintiff and his counsel have continually taken steps to investigate the claims in this case, analyze
11 information and documents, and determine potential damages. Plaintiff and his counsel have thoroughly
12 investigated the claims in this case through informal and formal discovery, including interviewing Class
13 Members, reviewing and analyzing pay records for a representative sample of Class Members, and
14 reviewing several hundred pages of documents produced by Defendant and numerous payroll
15 spreadsheets. *See* Decl. Rodriguez, ¶¶ 6-7. It was only after nearly three (3) years of thorough
16 investigation, discovery, an extensive damages analysis, and a full day of mediation that this settlement
17 was negotiated. *See* Decl. Rodriguez, ¶¶ 6-10. Thus, Plaintiff and his counsel have adequately
18 represented the class.

19 **ii. The Settlement is a Result of Serious, Informed, Non-Collusive Arm's Length**
20 **Negotiations Between the Parties**

21 The parties were in possession of all necessary information during the negotiations and
22 mediation. Plaintiff's counsel conducted investigations and engaged in discovery, including an
23 exchange of documents, records, and company policies that covered all aspects of the class claims and
24 sought information regarding the class members to ensure that Plaintiff could determine liability and
25 create an accurate damages model. *See* Decl. Rodriguez ¶¶ 6-10. As a result, Plaintiff was able to make
26 a reasonable estimation of Defendant's potential liability against which the results of any settlement
27 could be compared. *See id.* For these reasons, the settlement now before the Court was reached at a
28 stage where the parties had a clear view of the strengths and weaknesses of claims and defenses at issue

1 sufficient to support the settlement. There was also no collusion in reaching the proposed class
2 settlement as the negotiations were adversarial and contentious, although still professional in nature, at
3 all times. *See* Decl. Rodriguez ¶ 8.

4 **iii. The Relief Provided For the Class Is Adequate**

5 To make this determination the Court should take into account: (1) the costs, risks, and delay of
6 trial and appeal, (2) the effectiveness of any proposed method of distributing relief to the class,
7 including the method of processing class member claims, (3) the terms of any proposed award of
8 attorney's fees, including timing of payment, and (4) any agreement required to be identified under
9 Rule 23(e)(3).

10 **A. The Settlement Is Adequate In Light Of Potential Costs, Risks, and Delays**

11 A review of the Agreement's terms in light of potential risks, costs, and delays does not give
12 rise to any doubts about its fairness. Plaintiff's counsel carefully took into consideration risks involved
13 with each of the claims, including, but not limited to, whether Plaintiff would be successful in proving
14 certain types of pay should have been incorporated into the regular rate of pay, the viability of off the
15 clock and travel time pay claims, the viability of meal and rest period claims in light of Defendant's
16 timekeeping software and its effects on the presumption of violations based on payroll records, whether
17 recovery of wage statement and waiting time penalties may be precluded by a good faith defense by
18 Defendant, and the Court's discretion to reduce any PAGA penalties. *See* Decl. Rodriguez, ¶¶ 9-10.
19 Plaintiff's counsel also carefully evaluated the prospect of potential class certification issues, the
20 difficulties of complex litigation, the lengthy process of establishing specific damages and various
21 possible delays and appeals in agreeing to the proposed settlement, and the potential PAGA
22 manageability issues. *See id.* at ¶ 6-10. Based on the records and facts of this case, Plaintiff has
23 secured a gross recovery of approximately 10.63% to 37.49% and a net recovery of approximately 5%
24 to 16% of the claims' more realistic range of maximum recovery. *See* Decl. Rodriguez at ¶ 10.
25 Additionally, on average class members will receive a net award of approximately \$912.86. *See id.*
26 This settlement is a reasonable compromise of the claims and is within the percentile ranges of the total
27 available damages that have been approved in other class settlements. *See Officers for Justice v. Civil*
28 *Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559

1 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
2 potential recovery after reduction for attorney's fees was higher than median percentage for recoveries
3 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
4 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
5 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
6 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement
7 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
8 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
9 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
10 of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at
11 *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the
12 highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved
13 are good, which is highlighted by the fact that there was no objection to the settlement amount or the
14 attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal.
15 2012) ("the results achieved in this case were very favorable. Class members are provided with
16 immediate monetary relief, with an average award of around several hundred dollars and a minimum
17 award of \$50").

18 **B. Plaintiff's Method of Distributing Relief Will Be Effective**

19 It is not required that Class Members be given actual notice of a class settlement; instead, the
20 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
21 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
22 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
23 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
24 1994), the Court rejected a class member's argument that he had not received due process because he
25 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
26 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
27 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
28 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice

1 mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members
2 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
3 held to be part of the class settlement because they received the best notice practicable under the
4 circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651.

5 Under the Agreement, Plaintiff proposes using an exhaustive method to ensure the best practical
6 means possible is used to provide notice and payment to the class. Defendant will provide the
7 Settlement Administrator with Class Members' names, last known address, and social security numbers
8 ("Class Information" or "Class Data" under the Agreement). The Settlement Administrator will then
9 update this information by doing an address trace for each individual. The notices will be sent to Class
10 Members via first class mail. If any notices are returned as undeliverable, further investigation will be
11 performed and the notices will be re-mailed. Checks will be sent to the addresses obtained through the
12 notice process and after class members have had an opportunity to update their addresses with the
13 Settlement Administrator if necessary. *See* Exhibit A at pgs. 19-21, ¶¶ 53.e.-53.f; Exhibit F. This
14 notice method is regularly utilized in wage and hour class actions and similar to the one approved in
15 *Rannis*. Thus, the proposed procedures for notifying Class Members satisfy due process and should be
16 approved in this case.

17 **C. The Relief Is Adequate In Light of The Proposed Award of Attorneys' Fees And**
18 **Timing of Payment**

19 The amount allocated for attorneys' fees is within the ranges approved by other District Courts
20 and the Agreement is not contingent on the full fee allocation being awarded. *See Yanez v. HL*
21 *Welding, Inc.*, 2022 WL 788703, at *12 (S.D. Cal. 2022) (collecting California District Court wage and
22 hour class action cases awarding 1/3 of the gross settlement for attorney's fees). Plaintiff's counsel will
23 provide a lodestar analysis and additional informal to justify the request for fees in the attorneys' fees
24 and costs motion to be heard concurrently with the final approval motion. *See* Decl. Rodriguez, ¶ 21.
25 However, the attorney's fees incurred to date are approximately \$239,597.50 based on 433.5 total hours
26 and at rates that have been approved by Sacramento County Superior Court in November 2022, which
27 exceeds the attorney's fees amount to be requested. Thus, Plaintiff's counsel anticipates the lodestar
28 analysis will result in a substantial negative multiplier. *See id.* Additionally, any fees not awarded will

1 be distributed to the class pro rata. *See* Exhibit A at pg. 26, ¶ 61. All payments are being issued
2 simultaneously and no preference is given payment of attorney’s fees and costs over other payments.
3 *See id.* at pgs. 23-24, ¶ 57. Based on these facts, it is clear the relief is adequate in light of the proposed
4 award of attorneys’ fees and timing of payment.

5 **iv. The Settlement Treats Class Members Equitably Relative to Each Other**

6 Class Members are all subject to the same distribution formula to determine their share of the
7 Net Settlement Amount. *See* Exhibit A, at pgs. 24-25, ¶ 58. Thus, there is no difference in treatment
8 between them under the terms of the Agreement. Although class members may ultimately receive
9 different amounts under the Agreement, this is not a sufficient reason to deny settlement approval as it
10 is appropriate to account for potential differences in the amount of damages suffered by class members
11 and the risks associated with the various asserted claims. *See Lane v. Facebook, Inc.*, 696 F.3d 811,
12 823-825 (9th Cir. 2012). To the extent a Class Member worked for Defendant for a longer period of
13 time, they would have potentially been subject to more violations. Thus, it is entirely reasonable to tie
14 the amount allocated to any individual Class Member to their length of employment.

15 **c. Preliminary and Conditional Approval of the Settlement Class is Appropriate**

16 To proceed as a class action it must be found that “(1) the class is so numerous that joinder of all
17 members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or
18 defenses of the representative parties are typical of the claims or defenses of the class; and (4) the
19 representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. Proc.
20 23(a). Additionally, in cases seeking certification under Federal Rules of Civil Procedure 23(b)(3), the
21 questions of law or fact must predominate over questions affecting individual members and a class
22 action must be superior to other methods for fairly and efficiently adjudicating the controversy. *See* Fed.
23 R. Civ. Proc. 23(b)(3); *Sciortino v. PepsiCo, Inc.*, 2016 U.S. Dist. LEXIS 83937, *10 (N.D. Cal. 2016).
24 Public policy favors the use of class actions such that “[a]ny doubts regarding the propriety of class
25 certification should be resolved in favor of certification.” *Wixon v. Wyndham Resort Dev. Corp.*, 2009
26 U.S. Dist. LEXIS 100451, *5 (N.D. Cal. 2009); *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015).
27 It is a procedural question; it does not ask whether an action is legally or factually meritorious. *See*
28 *Amgen, Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194-1195 (2013); *Ellis v.*

1 *Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011). The parties agree that, for the purposes
2 of settlement, the class should be certified. See Exhibit A at pg. 30, ¶ 70.

3 **i. Numerosity**

4 A class with more than forty putative members is presumed to satisfy the numerosity
5 prerequisite. See *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 485 (E.D. Cal. 2006); *In re*
6 *Scorpion Techs., Inc. Sec. Litig.*, 1994 U.S. Dist. LEXIS 21413, *10 (N.D. Cal. 1994). In the present
7 case, there are approximately 241 Class Members employed across northern and southern California,
8 which vastly exceeds what other Courts have found to be sufficient for satisfying the numerosity
9 requirement. See *id.* Thus, the numerosity requirement has been met.

10 **ii. Commonality, Typicality, and Predominance**

11 The commonality element is construed liberally, not requiring every issue of law or fact to be
12 common. See *In re Conagra Foods, Inc.*, 90 F.Supp.3d 919, 972-73 (C.D. Cal. 2015); *Hanlon*, 150 F.3d
13 at 1019-20; *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328, *17 (C.D. Cal. 2012). Similarly,
14 the typicality element is permissively construed, only requiring the representative's claims to be
15 "reasonably co-extensive with those of absent class members; they need not be substantially identical."
16 See *Hanlon*, 150 F.3d at 1020.

17 The question of predominance begins with the elements of the underlying cause of action and
18 then considers whether those elements are capable of being proven by answers to questions common to
19 the class. See *Rica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 810 (2011); *Lilly v. Jamba*
20 *Juice Co.*, 308 F.R.D. 231, 241 (N.D. Cal. 2014); *Wixon*, 2009 U.S. Dist. LEXIS 100451, *20-21. The
21 existence of "some variation among the individual employees . . . do not defeat predominance." See
22 *Alba v. Papa John's USA*, 2007 U.S. Dist. LEXIS 28079, *30 (C.D. Cal. 2007). This is especially true
23 where the focus of the conduct alleged to be unlawful is on the defendant. See *Alba*, 2007 U.S. Dist.
24 LEXIS 28079, *31 (finding that while an overtime exemption was a fact intensive inquiry, it does not
25 defeat predominance due to the actual focus on defendant's conduct). For example, the presence of
26 unlawful policies or practices will support a finding of predominance. See, e.g., *Tierno v. Rite Aid*
27 *Corp.*, 2006 U.S. Dist. LEXIS 66436 (N.D. Cal. 2006). Challenges to the plaintiff's legal theories and
28 doubts regarding the plaintiff's ability to prove the claims at trial are irrelevant to determining

1 predominance. *See United Steel, Paper & Forestry, Rubber, Mfg. v. ConocoPhillips Co.*, 593 F.3d 802,
2 809 (9th Cir. 2010). Similarly, Courts have found that “individual questions about the number of hours
3 worked, wages earned, and compensation paid . . . will not defeat certification.” *Gomez v. Rossi*
4 *Concrete, Inc.*, 270 F.R.D. 579, 595 (S.D. Cal. 2010). Nor will individualized damages issues act as a
5 basis to deny certification. *See Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 513-514 (9th Cir. 2013)
6 (reversing a denial of certification based on individual issues in determining damages).

7 In the present case, questions of law or fact are common to the class and also predominate over
8 any potential individualized issue. Plaintiff’s theories of recovery are based on allegedly common
9 policies and practices of Defendant, *i.e.*, failing to include the value of bonuses and zone pay into the
10 regular rate of pay for premium wage payments (overtime, meal and rest period premiums, sick leave
11 wages, etc.), failing to pay for all hours worked as a result of off-the-clock travel time, work while
12 clocked out during meal periods, unpaid time due to rounding, and the failure to reimburse for cell
13 phone expenses incurred in connection with their being used for work purposes. The waiting time
14 penalty and wage statement penalty claims are entirely derivative.

15 Claims similar to Plaintiff’s have been found to be sufficient for class certification in several
16 cases. *See, e.g., See Magadia v. Wal-Mart Assocs.*, 2018 U.S. Dist. LEXIS 4715 (N.D. Cal. 2018)
17 (certifying a class action for meal period premiums paid at an employee’s regular rate of pay); *Leyva v.*
18 *Medline Indus.*, 716 F.3d 510, 513 (9th Cir. 2013); *Snipes v. Dollar Tree Distrib.*, 2017 U.S. Dist.
19 LEXIS 195460, at *14-16 (E.D. Cal. Nov. 27, 2017). Certification on this theory will also support
20 certification of waiting time penalty and wage statement claims as derivative violations. *See, e.g.*
21 *Jimenez*, 2012 U.S. Dist. LEXIS 65328, *67-68; *Lubin v. Wackenhut Corp.*, 5 Cal.App.5th 926, 958-960
22 (2016) (“First, the question whether Wackenhut’s wage statements contained the required elements
23 under Labor Code section 226, subdivision (a) is a common question, and Labor Code section 226,
24 subdivision (e)(2)(B)(i) clarifies that injury arises from defects in the wage statement, rather than from a
25 showing that an individual experienced harm as a result of the defect . . . Second, because plaintiffs’
26 meal and rest period claims are suitable for class treatment, their theory that the wage statements failed
27 to include premium wages earned for missed meal and rest periods also is suitable for class treatment”);
28 *Pena v. Taylor Farms Pac., Inc.*, 305 F.R.D. 197, 223 (E.D. Cal. 2015) (“Because the claims of this

1 subclass [regarding waiting time penalties] that may proceed are entirely derivative of the meal break
2 claims of the mixed hourly worker subclass, they meet or fail to meet the commonality and
3 predominance requirements to the same extent”). It is the lawfulness of Defendants’ policies and
4 practices themselves that are at issue, which renders certification appropriate. *See Brinker Restaurant*
5 *Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1033 (2012) (finding such determinations to be “the sort routinely,
6 and properly, found suitable for class treatment”). Plaintiff’s claims are typical of the class members
7 claims. *See* Exhibit B; Decl. Lingle ¶ 3. Plaintiff was subjected to, and experienced, the same policies
8 and practices being alleged to be unlawful. *See id.* As a result, the basis for Plaintiff’s claims and the
9 types of remedies sought will be similar amongst all Class Members. Plaintiff’s claims are, therefore,
10 reasonably co-extensive with those of absent class members. *See* Exhibit B; Decl. Lingle ¶ 3.

11 **iii. The Adequacy Requirement is Met**

12 To determine adequacy, answers to the following questions must be given: “(1) do the named
13 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the
14 named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *See Resnick*
15 *v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 943 (9th Cir. 2015) (finding no
16 conflict because there were no structural differences in the claims of the representative and other class
17 members under the settlement agreement and the enhancement awards were not conditioned on the
18 representative’s approval of the settlement). As to the second question, “[t]he relevant inquiry is
19 whether the plaintiffs maintain a sufficient interest in, and nexus with, the class so as to ensure vigorous
20 representation.” *See id.* In the present case, Plaintiff and Class Members are subject to the same
21 distribution formula based on weeks worked. This does not structurally favor Plaintiff in any way. *See*
22 Exhibit A at pgs. 24-25, ¶ 58. Neither Plaintiff nor his counsel have any conflicts with Class Members
23 and have conducted an exhaustive review and analysis of the claims to obtain a beneficial result for the
24 class. *See* Decl. Lingle ¶¶ 2-7; Decl. Rodriguez ¶¶ 3, 6-10. For the same reasons discussed above
25 regarding typicality, Plaintiff shares a common nexus of legal and factual issues with the class ensuring
26 they have the same interest in pursuing the most beneficial results possible in this case. Additionally,
27 Plaintiff’s counsel are experienced and have been found by several Courts to be adequate class counsel
28

1 in numerous complex wage and hour class actions. See Decl. Rodriguez ¶¶ 13-19. Thus, Plaintiff and
2 Plaintiff's counsel are adequate representatives of the settlement class members.

3 **iv. Superiority**

4 Factors relevant to determining whether a class action is superior to individual claims include
5 "(A) the class members' interests in individually controlling the prosecution or defense of separate
6 actions; (B) the extent and nature of any litigation concerning the controversy already begun by or
7 against class members; [and] (C) the desirability or undesirability of concentrating the litigation of the
8 claims in the particular forum" Fed. R. Civ. Proc. 23(b)(3). Where certification is for settlement
9 purposes only, considerations regarding manageability are irrelevant. See *Amchem Prods. v. Windsor*,
10 521 U.S. 591, 620 (1997). Additionally, where there are relatively few or no other individual lawsuits
11 concerning the same issues being litigated by members of the putative class, this favors a finding that a
12 class action is superior. See *Dirks v. Layton Brokerage Co. of St. Louis, Inc.*, 105 F.R.D. 125 (D. Minn.
13 1985). In the present case, class certification would be superior to alternative forms of adjudication.
14 Plaintiff has uncovered no evidence of any separate individual lawsuits being filed by Class Members
15 against Defendant litigating the same regular rate of pay issue. See Decl. Rodriguez ¶ 11. Second, there
16 may be only relatively small awards at stake for class members if they were to attempt individual
17 litigation, which supports a superiority finding. See *Leyva*, 716 F.3d 510. Third, the class is composed
18 of individuals working in California, asserting claims based on California substantive law, and
19 Defendant was located within Sacramento, California, including the Eastern District, which supports the
20 desirability of concentrating the litigation in the Eastern District. See Decl. Lingle ¶ 2; Exhibit B.

21 For the reasons set forth above, the Court should preliminarily and conditionally approve the
22 settlement class, subject to a final fairness hearing, as all the prerequisites of Rule 23(a) and the
23 additional requirements of Rule 23(b)(3) are satisfied.

24 **VI. CONCLUSION**

25 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
26 conditionally approve the proposed settlement class, grant preliminary approval of the Agreement,
27 approve the proposed form and content, and set dates for distribution of, the Notice of Settlement, set a
28 final fairness and settlement class certification hearing and briefing schedule therefor, set a hearing for

1 Plaintiff's Motion for Attorneys' Fees, Costs and Representative Enhancement and briefing schedule
2 therefor that will be heard at the same time as the final fairness and certification hearing, and adopt the
3 implementation schedule contained in the proposed order filed concurrently herewith.
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6

7 **Shimoda & Rodriguez Law, PC**

8 Dated: November 22, 2023

9 By: /s/ Justin P. Rodriguez
10 Galen T. Shimoda
11 Justin P. Rodriguez
12 Renald Konini
13 Attorneys for Plaintiff
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Attorneys for Plaintiff ANTHONY LINGLE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 26, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021
FAC Filed: July 22, 2022
SAC Filed: October 7, 2022
Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Class and Representative Action Settlement Agreement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Apex Class Action, LLC, Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Class Action Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: November 22, 2023

Shimoda & Rodriguez Law, PC

By: /s/ Justin P. Rodriguez
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

EXHIBIT A

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND RELEASE**

This Class and Representative Action Agreement and Release (“Agreement”) encompasses the action, *Anthony Lingle v. CentiMark Corporation*, U.S.D.C. Eastern District of CA, Case No. 2:22-cv-01471-JDP, which is the Second Amended Complaint filed on October 7, 2022.

This Agreement is entered into between Plaintiff Anthony Lingle (“Plaintiff”) individually and on behalf of all others similarly situated, as well as on behalf of the State of California with respect to the PAGA Members, and Defendant CentiMark Corporation (“Defendant”). The Plaintiff and Defendant are the “Parties.”

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the “Released Class Claims” and “Released PAGA Claims” (as defined below) on a class and representative action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained herein. This Agreement, which is contingent upon final Court approval, contains the essential terms of the Parties’ agreement. Plaintiff and Class Counsel believe, and the Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits upon the Class, PAGA Members, and the State of California.

DEFINITIONS

1. Action

“Action” means both (a) the civil action filed by Plaintiff entitled *Anthony Lingle v. CentiMark Corporation*, U.S.D.C. Eastern District of CA, Case No. 2:22-cv-01471-JDP, which is the Second Amended Complaint filed on October 7, 2022, and (b) the related PAGA Notice Letter filed by the Plaintiff on November 19, 2021. The Parties agree that the Action includes all claims and causes of action alleged in the Second Amended Complaint and in the related PAGA Notice Letter.

2. Class Counsel

“Class Counsel” means Shimoda & Rodriguez Law, PC

3. Class Counsel Award

“Class Counsel Award” means the attorney’s fees for Class Counsel’s litigation and resolution of the Action, and Class Counsel’s actual expenses and costs incurred and to be incurred in connection with the Action.

4. Class Information

“Class Information” or “Class Data” means information on the Class Members compiled from Defendant’s records and provided to the Settlement Administrator in a Microsoft Excel spreadsheet, including each Class Member’s full name; last known address; social security number; dates of employment; and additional information sufficient for the Settlement Administrator to determine the Workweeks and Pay Periods for each Class Member and each PAGA Member.

5. Class Members

“Class” or “Class Members” means all non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for CentiMark in California, and who have not signed, or opted out of, an arbitration agreement, during the Class Settlement Period.

6. Class Settlement

“Class Settlement” means the settlement and resolution of the Released Class Claims.

7. Class Settlement Period

“Class Settlement Period” is from July 11, 2018 until the earlier of the following two dates: (a) November 19, 2023, or (b) the date that the Court grants preliminary approval of the settlement.

The Parties acknowledge and agree that Defendant CentiMark entered into a prior settlement agreement, *Ramon Mata v. CentiMark Corporation*, San Bernardino County Superior Court, Case No. CIVDS1707640, that resolved the same claims alleged in the instant Action. (the “*Mata Settlement*”). The Parties also acknowledge and agree that the covered period by the *Mata Settlement* was September 7, 2012 through July 10, 2018.

8. Class Representative

The “Class Representative” is Plaintiff Anthony Lingle.

9. Class Representative Enhancement Award

“Class Representative Enhancement Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment and/or Individual PAGA Payment, in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Action and in return for executing a general release of claims with Defendant.

10. Class Representative Released Claims

Class Representative does not release his claims raised in his single plaintiff action for wrongful termination, which is pending in Placer County Superior Court, and was filed on August 4, 2022, Case No, S-CV-0048878 (the "Single Plaintiff Action").

“Class Representative Released Claims” means, with the exception of the claims in the Single Plaintiff Action, all known and unknown claims against the Released Parties, including the Released Claims (defined herein) as well as other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the Private Attorneys General Act (“PAGA”), claims under the Fair Labor Standards Act (“FLSA”), and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum and overtime wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Class Representative’s relationship, or termination of the relationship, with any Released Party through the date of Final Approval for any type of relief. Class Representative further covenants that, other than his pending Single Plaintiff Action, he will not become a member of any other legal actions against the Released Parties asserting any of Class Representative’s Released Claims, and will opt out of any such actions if necessary. For the avoidance of

doubt, this is a complete and general release of all claims to the maximum extent permitted by law.

The scope of this release does not include the claims raised in Plaintiff's pending Single Plaintiff Action, or claims for unemployment insurance, disability, social security, and workers' compensation (except for claims pursuant to Labor Code Sections 132a and 4553).

11. Court

"Court" means the United States District Court for the Eastern District of California in Sacramento, California.

12. Defendant

"Defendant" means Defendant CentiMark Corporation.

13. Effective Date

"Effective Date" means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if one or more Participating Class Members objects to the Settlement and no appeal was filed, the day after the deadline for filing a notice of appeal from the Judgment has expired; or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

14. Final Approval Hearing

"Final Approval Hearing" means the final hearing at which the Court reviews the fairness, reasonableness, and adequacy of the Settlement and decides whether the Settlement meets all requirements for final approval.

15. Final Judgment

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties following the Final Approval Hearing.

16. Gross Settlement Amount

“Gross Settlement Amount” means the total maximum amount payable under the terms of this Agreement by Defendant, which is the gross sum of \$600,000.00 (Six-Hundred Thousand Dollars and Zero Cents), subject to the “Modification Provision” below, which includes: the Individual Settlement Payments to Participating Class Members; payment of the Settlement Administration Costs as approved by the Court; the Class Representative Enhancement Award to Plaintiff as approved by the Court; a payment to Class Counsel of attorney’s fees of one-third of the Gross Settlement Amount and reasonable litigation costs which shall be approved by motion with the Court; and the PAGA Payment.

Payment of the amount necessary to cover the employer’s portion of payroll taxes associated with the portion of the settlement allocated to wages shall be made by Defendant, separate and apart from the Gross Settlement Amount.

The Settlement Administrator will make all required tax deductions and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance with the applicable provisions of this Agreement.

a. Modification Provision:

At the August 21, 2023 mediation date, CentiMark represented that an extrapolation of the workweeks for both the Settlement Class and PAGA Members is 24,871 from July 11, 2018, to August 21, 2023 (the "Mediation Period"). For purposes of this calculation, the total number of weeks worked attributable to the Settlement Class and the total of weeks worked attributable to PAGA Members are separate and have been added together. The Parties agree that if, once the data covering the Mediation Period is reviewed by the Settlement Administrator, and the actual number of workweeks during the Mediation Period is more than ten percent (10%) greater than 24,871 (or greater than 27,359 workweeks), then the GSA shall increase by \$24.13 for each additional workweek. For example, if the actual number of workweeks during the Mediation Period is 27,400, then the GSA will increase in the amount of \$989.33.

17. Individual PAGA Payment

“Individual PAGA Payment” means the amounts paid from the PAGA Payment to PAGA Members that shall, in the aggregate, comprise 25% of the PAGA Payment,

in the amount of Thirty-Five Thousand Dollars (\$35,000.00) as consideration for Settlement of claims for civil penalties under the PAGA.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a valid Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment.

19. LWDA

“LWDA” means the California Labor and Workforce Development Agency.

20. LWDA PAGA Payment

“LWDA PAGA Payment” means the amount of One-Hundred Five Thousand Dollars and Zero Cents (\$105,000.00) to be paid to the LWDA as its 75% share of the PAGA Payment, as consideration for Settlement of claims for civil penalties under PAGA.

21. Net Settlement Amount

“Net Settlement Amount” means the Gross Settlement Amount less the Court-approved Class Counsel Award, the Class Representative Enhancement Award, the PAGA Payment, and the Settlement Administration Costs. The Net Settlement Amount is the total amount that will be paid to Participating Class Members in the form of Individual Settlement Payments.

22. Notice of Class Action Settlement

“Notice of Class Action Settlement” or “Notice” means the notice approved by the Parties and subject to Court approval, substantially in the form of **Exhibit A** hereto, explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

23. PAGA

“PAGA” refers to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 et seq.

24. PAGA Members

“PAGA Members” means all non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for CentiMark in California during the PAGA Settlement Period.

25. PAGA Notice Letter

“PAGA Notice Letter” is the PAGA Notice Letter filed by Plaintiff Lingle with the LWDA and November 19, 2021.

26. PAGA Payment

“PAGA Payment” means the portion of the Gross Settlement Amount that shall be allocated to claims under the PAGA. The Parties have agreed to allocate One-Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00). Seventy-five percent (75%) shall be payable to the LWDA (i.e., the LWDA PAGA Payment) and the remaining twenty-five percent (25%) shall be used to pay the Individual PAGA Payments to PAGA Members in settlement of all claims for PAGA penalties as defined in this Agreement.

27. PAGA Settlement Period

“PAGA Settlement Period” means the period from May 17, 2021 until the earlier of the following two dates: (a) November 19, 2023, or (b) the date that the Court grants preliminary approval of the settlement.

28. Participating Class Members

“Participating Class Members” means those Class Members who do not file a valid and timely Request for Exclusion.

29. Parties

“Parties” means Plaintiff and Defendant, collectively.

30. Pay Periods

“Eligible Pay Period” means any pay period in which a PAGA Member worked for any amount of time for Defendant during the PAGA Settlement Period according to Defendant’s records.

31. Pay Periods Dispute

“Pay Periods Dispute” means a Class Member’s written letter disputing the pre-printed information on the Notice of Class Action Settlement as to the amount of one’s Pay Periods during the PAGA Period, and the dispute must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security number; (c) clearly state the dispute about the Pay Periods credited and what the PAGA Member contends is the correct number; (d) attach any documentation that supports PAGA Member’s position; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

32. Plaintiff

“Plaintiff” means Plaintiff Anthony Lingle.

33. Preliminary Approval Date

“Preliminary Approval Date” means the date on which the Court issues an order granting preliminary approval of the proposed Settlement.

34. Qualified Settlement Fund

“Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator which the Parties agree will at all times be treated as a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1, *et seq.*

35. Released Class Claims

“Released Class Claims” shall mean all claims and/or causes of action under any state, local, or federal law or administrative regulation brought by Participating Class Members against the Released Parties, and that were or could have been alleged based on the allegations in the Action, including all class claims stated in

the Action alleging violations of Labor Code sections 201, 202, 203, 221, 223, 225, 226(a), 226 et seq, 226.3, 226.7, 245 *et seq*, 256, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 2802, and IWC Wage Order 16, including, *inter alia*, sections 3, 4, 11, 12, and section 17200 *et seq* of the California Business and Professions Code, and:

- (a) All claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, including driving time, and the alleged failure to pay for all time worked at correct rates;
- (b) All claims for unpaid wages due to alleged rounding of records of time worked and meal periods.
- (c) All claims for unpaid regular rates, including regular rates for overtime and double-time wages, meal and rest break premium wages, and paid sick leave.
- (d) All claims for meal period violations, including claims for (1) first and second meal periods, (2) short, late, missed, interrupted, "on call," and otherwise improperly controlled meal periods, (3) the failure to pay premium wages, (4) the failure to pay premium wages at the correct regular rates, and (5) the failure to properly record meal periods;
- (e) All claims for rest break violations, including claims for (1) first, second, third, and fourth rest breaks, (2) short, late, missed, interrupted, "on call" rest breaks and otherwise improperly controlled rest breaks, (3) the failure to pay premium wages, and (4) the failure to pay premium wages at the correct regular rates;
- (f) All claims for paid sick leave violations, including the failure to (1) accurately accrue paid sick leave, (2) accurately provide notice of accrued sick leave, (3) accurately provide paid sick leave, and (4) provide paid sick leave at the correct regular rates.
- (g) All claims for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code;
- (h) All claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phones, tools and materials for work, and meal expenses;
- (i) All claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9)

based on the allegations in the Action, including the allegations that wage statements lacked the total number of hours worked and corresponding rates, including regular rates, and including claims for injuries suffered therefrom;

- (j) All claims for the alleged failure to keep accurate records in violation of Section 1174 of the Labor Code;
- (k) All claims for failure to pay contract wages or for making unlawful deductions from wages in violation of Sections 221, 223, and 225 of the Labor Code;
- (l) All claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claims, and causes of action alleged in the Action; and
- (m) All claims for statutory penalties, liquidated damages, punitive damages, interest, attorney's fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief based on the allegations in the Action.

The period of the Released Claims will extend for the Settlement Class Period.

36. Released PAGA Claims

"Released PAGA Claims" shall mean all claims and causes of action for PAGA penalties against the Released Parties that were or could have been alleged based on the allegations in the Action, including all claims for PAGA penalties based on alleged violations of Labor Code sections 201, 202, 203, 221, 223, 225, 226(a), 226 et seq, 226.3, 226.7, 245 et seq, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197, 1197.1, 2802, and IWC Wage Order 16, including, *inter alia*, sections 3, 4, 11, 12, and:

- (a) All claims for PAGA penalties based on the alleged failure to pay wages earned, including minimum, overtime, and double-time wages, the alleged failure to pay for all time worked including driving time, and the alleged failure to pay for all time worked at correct rates;
- (b) All claims for PAGA penalties based on the alleged failure to pay for all time worked due to rounding of records of time worked and meal periods;

- (c) All claims for PAGA penalties based on the alleged failure to pay regular rates, including regular rates for overtime and double-time wages, meal and rest break premium wages, and paid sick leave;
- (d) All claims for PAGA penalties based on the alleged failure to provide compliant meal periods, including claims for (1) first and second meal periods, (2) short, late, missed, interrupted, "on call," and otherwise improperly controlled meal periods, (3) the failure to pay premium wages, (4) the failure to pay premium wages at the correct regular rates, and (5) the failure to properly record meal periods;
- (e) All claims for PAGA penalties based on the alleged failure to provide compliant rest breaks, including claims for (1) first, second, third, and fourth rest breaks, (2) short, late, missed, interrupted, "on call" and otherwise improperly controlled rest breaks, (3) the failure to pay premium wages, and (4) the failure to pay premium wages at the correct regular rates;
- (f) All claims for PAGA penalties for alleged paid sick leave violations, including the failure to (1) accurately accrue paid sick leave, (2) accurately provide notice of accrued paid sick leave, (3) accurately provide paid sick leave, and (4) provide paid sick leave at the correct regular rates.
- (g) All claims for PAGA penalties for the untimely payment of final wages under sections 201 to 203 of the Labor Code Section;
- (h) All claims for PAGA penalties for allegedly unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phones, tools and materials for work, and meal expenses;
- (i) All claims for PAGA penalties for allegedly improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the allegations in the Action, including the allegations that wage statements lacked the total number of hours worked and corresponding rates, including regular rates, and including claims for injuries suffered therefrom;
- (j) All claims for PAGA penalties for the alleged failure to keep accurate records in violation of Section 1174 of the Labor Code;

- (k) All claims for PAGA penalties for the alleged failure to pay contract wages or for making unlawful deductions from wages in violation of Sections 221, 223, and 225 of the Labor Code;
- (l) And all other claims for PAGA penalties alleged in the Action.

The period of the Released PAGA Claims will be the PAGA Settlement Period.

37. Released Parties

“Released Parties” means Defendant CentiMark Corporation and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, benefit plans, subsidiaries, affiliates, successors, and assigns.

38. Request for Exclusion

“Request for Exclusion” means a Class Member’s written letter indicating a request to be excluded from the Class Settlement.

39. Response Deadline

“Response Deadline” means the date forty-five (45) calendar days after the Settlement Administrator mails the Notice of Class Action Settlement to Class Members, which is the last date on which Class Members may: (a) submit a Request for Exclusion; (b) submit objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement. If the forty-fifth (45th) day falls on a Sunday or State or Federal holiday, then the deadline is extended to the next business day.

40. Settlement

“Settlement” or “Agreement” means this Class and Representative Agreement and Release.

41. Settlement Administrator

“Settlement Administrator” means Apex Class Action, LLC, the third-party company that is responsible for administering the settlement, mutually agreed to by

the Parties and appointed by the Court upon Class Counsel's motion for preliminary approval of this Settlement.

42. Settlement Administrator Costs

"Settlement Administrator Costs" means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement.

43. Workweeks

"Workweeks" means any workweek in which a Class Member worked for any amount of time for Defendant during the Class Period according to Defendant's records.

44. Workweeks Dispute

"Workweeks Dispute" means a Class Member's written letter disputing the pre-printed information on the Notice of Class Action Settlement as to the amount of one's Workweeks during the Class Period, and the dispute must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, telephone number, and last four (4) digits of Social Security number; (c) clearly state the dispute about the Workweeks credited and what the Class Member contends is the correct number; (d) attach any documentation that supports Class Member's position; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

RECITALS

45. Procedural History

On December 2, 2021, Plaintiff Anthony Lingle filed a putative class action complaint alleging several wage and hour claims against Defendant. On November 19, 2021, Plaintiff Lingle filed a PAGA Letter with the LWDA seeking PAGA civil penalties for alleged wage and hour violations by the Defendant. On July 22, 2022, Plaintiff Lingle filed a First Amended Complaint that included the PAGA claim. On August 4, 2022, Plaintiff Lingle filed a single plaintiff action for

wrongful termination. On October 7, 2022, Plaintiff Lingle filed a Second Amended Complaint as a class and representative action.

On August 21, 2023, the Parties participated in a mediation session with Louis Marlin, Esq., a prominent mediator experienced in resolving wage and hour class and representative actions. As a result of the mediator's efforts, the Parties reached an agreement to settle all claims and causes of action alleged in the Action by the Plaintiff under the California Labor Code, the California Business and Professions Code, the applicable California Wage Order, and the PAGA.

Before the mediation, Defendant produced extensive documentation including time and pay data, policy documents, class size information, pay period and workweek information, and information regarding the hourly rates of the settlement class members. Defendant provided discovery sufficient to enable Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case.

46. No Admission

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in the Action. Defendant also disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative treatment. This Settlement is a compromise of disputed claims. Nothing contained in this Settlement, no documents referred to herein, and no action taken to carry out this Settlement, shall be construed or used as an admission by or against Defendant as to the merits of the claims asserted in the Actions or in any other proceeding.

Defendant contends that at all times it has complied with all applicable state, federal and local laws related to the Class Members' employment. Defendant has entered into this Settlement to avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of the Defendant collectively or individually, or as an admission that class or representative action treatment would be allowed outside the settlement context. The Parties agree that this Settlement cannot be used to support any claim for subsequent penalty violation rates under the PAGA in any subsequent PAGA litigation.

Pursuant to California Evidence Code sections 1152 and 1154, this Settlement shall be inadmissible as evidence in any proceeding; except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent action against or by Defendant to support a stay of such subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

47. Benefits of Settlement to Class and PAGA Members

Class Counsel investigated the facts relevant to the Action, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel believes that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class trial, and numerous potential appellate issues. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Actions on the terms set forth herein.

Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims asserted by Plaintiff in the Action. Defendant has also taken into account the risks of further litigation in reaching the decision to enter into this Settlement. Even though Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in the Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in the Action.

48. Settlement of Disputed Claims

This Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. Plaintiff and Participating Class Members and PAGA Members have claimed and continue to claim that the Released Class Claims and the Released PAGA Claims have merit and give rise to liability on the part of Defendant. Nothing contained in this Agreement, no

documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Participating Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Action.

TERMS OF AGREEMENT

49. Release for All Participating Class Members

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Participating Class Members, as well as their spouses, heirs, executors, administrators, trustees and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Released Class Claims. These releases will take effect whether or not a Participating Class Member receives his or her Individual Settlement Payment or cashes and deposits any check for the Individual Settlement Payment.

50. Release for All PAGA Members

Upon the Effective Date and full funding of the Gross Settlement Amount, as Representatives of the State of California and on behalf of the LWDA, Plaintiff and all PAGA Members fully and finally release the Released Parties from the Released PAGA Claims for the PAGA Settlement Period. These releases will take effect whether or not a PAGA Member receives his or her Individual PAGA Payment or cashes and deposits any check for the Individual PAGA Payment.

51. Release of Claims by Plaintiff

With the exception of the claims alleged in the Single Plaintiff Action, as of the Effective Date and full funding of the Gross Settlement Amount, Plaintiff releases the Released Parties from all the Class Representative Released Class and PAGA Claims. Plaintiff's release set forth herein includes a waiver of all rights under California Civil Code §1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
THAT THE CREDITOR OR RELEASING PARTY DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.**

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist against Defendant at the time of the execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

52. The Motion for Preliminary Approval

Class Counsel shall be responsible for preparing the Motion for Preliminary Approval. Class Counsel agrees to provide Counsel for Defendant with drafts of all documents they intend to submit in support of their Motion for Preliminary Approval at least five (5) calendar days in advance of filing to allow Counsel for Defendant a reasonable time to review and comment on such papers. Plaintiff will review and consider in good faith any comments/edits Defendant's Counsel may propose to any preliminary approval documents.

53. Settlement Administrator

Within twenty-one (21) calendar days following the date that the Court grants Preliminary Approval of this Agreement, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Class Action Settlement to the Class Members. The Settlement Administrator shall maintain the Class Information as private and confidential and shall not disclose such data to any persons or entities other than Counsel for Defendant, except that relevant information can be provided to Class Counsel, on an individual basis only, and only when necessary for Class Counsel to respond to specific inquiries or requests from individual Class Members. However, Class Counsel shall be able to review disbursement calculations prior to any notice mailings to ensure accuracy and quality control as described below. But the Administrator must omit any personal identifying information in data provided to Class Counsel.

The Class Information is being supplied solely for purposes of the administration of the Settlement set forth in this Agreement and cannot be used by the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the

Class Information will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendant and will only be used to administer the Settlement under the terms provided herein.

a. Notice by First Class U.S. Mail.

No later than twenty-one (21) calendar days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Information. Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within fourteen (14) calendar days of receipt of the Class Information, the Settlement Administrator will mail copies of the Notice of Class Action Settlement to all Class Members via regular First-Class U.S. Mail, postage prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Workweeks and estimated Individual Settlement Amounts for Class Members and PAGA Members prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. The form of the proposed Notice of Class Action Settlement will be agreed to by the Parties, and subject to Court approval and modification as necessary to fulfill the Parties desire to resolve the case.

b. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is affixed, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security Number of the Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within five (5) calendar days of receiving notice that a Notice of Class Action Settlement was undeliverable. Class Members who receive a re-mailed Notice of Class Action Settlement shall respond by the end of the Class Notice Period or ten (10) calendar days from the date of re-mailing the Class Notice, whichever is later.

c. Disputes Regarding Individual Settlement Payments and Individual PAGA Payments.

Class Members and PAGA Members will have the opportunity, should they disagree with the number of Workweeks or Pay Periods stated on their Notice of Class Action Settlement by submitting a Workweeks Dispute, postmarked on or before the Response Deadline. If there is a Workweeks Dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility of each Class and PAGA Member's eligibility for, and the amounts of, their Individual Settlement Payment and Individual PAGA Payment under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment and Individual PAGA Payment will be binding upon the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

d. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

e. Exclusions.

The Notice of Class Action Settlement shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address and telephone number of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address.

The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Class Members who fail to submit a valid

and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Action.

Any Class Member who requests to be excluded from the Class Settlement will not be entitled to any recovery under the Class Settlement and will not be bound by the terms of the Class Settlement or have any right to object to or appeal the class settlement.

Any Request for Exclusion has no effect on the PAGA Settlement; Any Class Member who is also considered a PAGA Member will still be issued their Individual PAGA Payment and be bound by the PAGA Settlement, regardless of whether they submit a Request for Exclusion.

No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide counsel for the Parties with a complete list of all members of the Class who have timely submitted a Request for Exclusion.

f. Objections.

The Notice of Class Action Settlement shall state that Participating Class Members who wish to object to the Settlement may do so in person (or other method of personal appearance permitted by the court, e.g., Zoom) at the Final Approval Hearing and/or in writing. Any written objection ("Notice of Objection") must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received.

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name and address of the objecting Settlement Class Member; (2) the factual and/or legal basis for the objection; and (3) whether the Settlement Class Member intends to appear at the Final Approval Hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline is filed with the Court along with the Motion for Final Approval.

Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant with this notice no later

than the Response Period Deadline. Any Settlement Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

54. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the Settlement or file Requests for Exclusion, or to appeal from the Court's Final Judgment.

55. Funding of the Qualified Settlement Fund

No later than seven (7) calendar days after the Effective Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions for paying the Gross Settlement Amount into the QSF. The Settlement Administrator will also inform Defendant of the amount to be sent to the QSF to pay for the employer's share of payroll taxes. No later than thirty (30) calendar days after the Effective Date, Defendant shall fund the QSF.

56. Net Settlement Amount

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement Amount is \$220,000.00. The Parties estimate the amount of the Net Settlement Amount to be calculated as follows:

Gross Settlement Amount	\$600,000.00
Class Rep. Enhancement Award	\$10,000.00
Requested Class Counsel Fees	\$200,000.00
Requested Class Counsel Expenses	Up to \$15,000
Total PAGA Payment	\$140,000.00
Settlement Administrator Costs	\$15,000
Net Settlement Amount -- \$220,000.00	

This is a non-reversionary Settlement in which Defendant will pay the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to

Defendant. The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Gross Settlement Amount. Any award of less than the amounts requested for enhancements, administrative costs, litigation costs, or attorney's fees will be returned to the Net Settlement Amount and distributed to the Participating Class Members.

57. Settlement Dates

Class Counsel shall provide Defendant's Counsel a draft Motion for Preliminary Approval for Defendant's review and input.	5 calendar days in advance of filing.
Defendant provides the Class Information to the Administrator	21 calendar days after the Court grants Preliminary Approval
Settlement Administrator to mail Notice of Class Action Settlement	14 calendar days after receipt of the Class Information
Settlement Administrator to re-mail Notice of Class Action Settlement	5 calendar days after receipt of notice that the Notice of Class Action Settlement was undeliverable.
Response Deadline to the Notice of Class Action Settlement	45 calendar days after mailing
New Response Deadline to the Notice of Class Action Settlement for those receiving re-mailed Notices of the Class Action Settlement	The original Response Deadline or 10 calendar days from the date of remailing, whichever is later.
Settlement Administrator to provide counsel for the Parties a complete list of all Class Members who timely submitted a Request for Exclusion and a Declaration regarding the statistics and responses of settlement administration to date	14 calendar days after the Response Deadline

Defendant has the option to nullify the Settlement.	10 calendar days after notification by the Settlement Administrator that more than 10% of the Class Members submitted valid Requests for Exclusion.
Class Counsel shall provide Defendant's Counsel a draft Motion for Final Approval for Defendant's review and input.	5 calendar days in advance of filing.
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel Settlement Administrator shall send to Defendant's Counsel the electronic wiring instructions for the Settlement Amount.	7 calendar days after the Effective Date.
Defendant shall fund the QSF.	30 calendar days after the Effective Date.
Settlement Administrator shall mail Individual Settlement Payments	7 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail Individual PAGA Payments	7 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail the LWDA PAGA Payment.	7 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail the Class Representative Enhancement Awards	7 calendar days after Defendant funds the QSF.

Settlement Administrator shall mail the Class Counsel Award	7 calendar days after Defendant funds the QSF.
Settlement Administrator shall be paid the Settlement Administrator Costs.	7 calendar days after the Defendant funds the QSF
Settlement Administrator shall mail reminder postcards to the Participating Class Members and PAGA Members whose settlement checks were not returned or cashed.	100 calendar days <u>before</u> the Individual Settlement Payments and Individual PAGA Payments expire.
Check Cashing Deadline for Class Members and PAGA Members	180 calendar days after the mailing of the Individual Settlement Payments and Individual PAGA Payments
Settlement Administrator shall send any remaining funds to Salvation Army Sacramento Metro	14 calendar days after the check cashing deadline
Settlement Administrator shall provide a compliance declaration to the Parties	21 days after the check cashing deadline

58. Individual Settlement Payments

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows:

- (i) After preliminary approval of the Settlement, using the Class Information, the Settlement Administrator will compute the total number of Workweeks of all Participating Class Members collectively during the Class Period, and this sum shall be known as the Workweek Total; (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value for each Eligible Workweek (the "Workweek Value"); and (iii) the Settlement Administrator will multiply the number of Workweeks of a Participating Class Member during the Class Period by the Workweek Value to determine that Participating Class Member's estimated Individual Settlement Payment.

- (ii) After final approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value for each Eligible Workweek (the "Workweek Value") and multiply the number of Workweeks of a Participating Class Member during the Class Period by the Workweek Value to determine that Participating Class Member's final Individual Settlement Payment.

Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within fifteen (15) calendar days after Defendant fully funds the settlement.

59. PAGA Payments

A total amount of \$140,000.00 from the Gross Settlement Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-five percent (75%) of this amount will be the LWDA PAGA Payment to be paid to the LWDA and the remaining twenty-five (25%) shall be distributed to the PAGA Members as Individual PAGA Payments. Any portion of the PAGA Payment not approved by the Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court shall be paid from the Gross Settlement Amount; in no event shall Defendant be required to pay in excess of the Gross Settlement Amount in such circumstances.

The LWDA PAGA Payment will be paid to the LWDA within fifteen (15) calendar days after Defendant fully funds the settlement.

The remaining 25% of the PAGA Payment to be distributed to the PAGA Members as Individual PAGA Payments and shall be distributed based on a pro rata share based on the number of Pay Periods during the PAGA Settlement Period. To establish the pay period value, the Settlement Administrator will first determine the total number of Pay Periods during the PAGA Settlement Period. The pay period value will be equal to 25% of the PAGA Payment divided by the total number of Pay Periods worked by PAGA Members during the PAGA Settlement Period. The pay period value will be rounded to the nearest cent. The amount of the Individual PAGA Payment to be paid to each PAGA Member will be determined by multiplying the pay period value by the total number of Pay Periods. Individual PAGA Payments shall be mailed by regular First-Class U.S. Mail to each PAGA Member's last known mailing address within fifteen (15) calendar days after Defendant fully funds the settlement.

60. Class Representative Enhancement Award

Plaintiff will make an application to the Court for a Class Representative Enhancement Award of up to \$10,000.00. The Class Representative Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar days after Defendant fully funds the Settlement. The Class Representative Enhancement Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Participating Class Member and Individual PAGA Payment as a PAGA Member. Any amount requested by Plaintiff for the Class Representative Enhancement Award that is not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement. In the event the Court reduces or does not approve the requested Class Representative Enhancement Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, nor will Plaintiff or Class Counsel seek, request, or demand an increase to the Gross Settlement Amount on that basis.

61. Class Counsel Award

Class Counsel will file a motion for attorney's fees in the amount of up to one-third of the Gross Settlement Amount, and for the reimbursement of reasonable litigation costs and expenses associated with Class Counsel's prosecution of this matter, not to exceed \$15,000, to be paid from the Gross Settlement Amount. Class Counsel shall be paid the Class Counsel Award no later than fifteen (15) calendar days after Defendant fully funds the settlement. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorney's fees and costs and, in the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, nor will Plaintiff or Class Counsel seek, request, or demand an increase to the Gross Settlement Amount on that basis.

62. Tax Treatment

The Settlement Administrator will report each payment made from the Qualified Settlement Fund to state and federal government authorities, including the Internal

Revenue Service, to the extent required by law. All Individual Settlement Payments shall be allocated as follows: 20% as wages and 80% as penalties and interest. The 20% portion of Settlement Payments subject to required withholdings and deductions by the Settlement Administrator shall be reported on a Form W-2 (and such other state or local tax reporting forms as may be required by law) with respect to the year of payment as wage income to the Settlement Class Member by the Settlement Administrator on behalf of the Qualified Settlement Fund. All Individual PAGA Payments shall be allocated as 100% penalties, for which a Form 1099 will be issued if required. The Settlement Administrator shall issue I.R.S. Form 1099 if required for the remaining payments under this Agreement. Defendant shall solely be responsible for paying the employer's share of payroll taxes on the amounts allocated as wages, which amount shall be paid separately from the Gross Settlement Amount. Plaintiff, any Participating Class Member and any PAGA Member who receives any Individual Settlement Payment or Individual PAGA Payment should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Participating Class Members, PAGA Members and Class Counsel shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income tax or other tax or any other withholdings, if any, on any of the payments made pursuant to this Settlement. The Notice will advise each Class and PAGA Member to seek his/her own personal tax advice prior to acting in response to the Notice, and Defendant, the Class Representative, and Class Counsel agree that each Class and PAGA settlement member will have an adequate opportunity to seek tax advice prior to acting in response to the Notice.

63. No Tax Advice

Defendant has not made any representations as to the taxability to any Participating Class Members of any portion of the Individual Settlement Payments, to any PAGA Members regarding the Individual PAGA Payments, the payment of any attorney's fees and expenses to Class Counsel, or the payment of the Class Representative Enhancement Award to the Class Representative. Neither Plaintiff, Class Counsel, nor Defendant's Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

64. Unclaimed Settlement Payment(s)

After one hundred and eighty (180) calendar days of the mailing of the Individual Settlement Payments and Individual PAGA Payment checks, any remaining funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks and/or Individual PAGA Payment checks shall be deposited to the Salvation Army Sacramento Metro. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384 under California law, whether or not they all cash their Individual Settlement Payments, and Defendant will not be required to pay any interest on said amount.

As part of the administration, one hundred (100) calendar days before the Individual Settlement Payment and Individual PAGA Payment checks expire, the Settlement Administrator shall mail reminder postcards to those Participating Class Members and PAGA Members whose settlement checks were not returned undeliverable and who have not cashed their checks.

65. Settlement Administrator Costs

The Settlement Administrator has provided a settlement administration quote for \$7,766.25. Upon filing the motion for Final Approval, Plaintiff will request the Court to award an amount equal to the actual administration costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Participating Class Members and PAGA Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement Administration process and to make reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Settlement Administrator shall be paid the Settlement Administrator Costs no later than fifteen (15) calendar days after Defendant fully funds the settlement. Any amount requested for the Settlement Administrator Costs and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

66. Settlement Administrator Duties

In addition to establishing the Qualified Settlement Fund, the Settlement Administrator shall be responsible for the following: creating a plan of settlement administration and settlement fund distribution; using the Class Information to calculate each Class Member's approximate Individual Settlement Payment and

each PAGA Member's Individual PAGA Payment; ascertaining the identity and whereabouts of the Class Members and mailing Notice of Class Action Settlement out to them; communicating with Class Members as necessary; printing and mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members and PAGA Members as directed by the Court (including, but not limited to, the DE 9, the DE 9C, 1099s, W-2s and W-3s); receiving and reporting requests for exclusion and objections; processing and mailing payments to Plaintiff, Class Counsel, Participating Class Members, the LWDA and PAGA Members; notifying the Parties of, and resolving any disputes regarding, the calculation of Participating Class Members' Individual Settlement Payments or PAGA Members' Individual PAGA Payments; complying with all tax reporting notice and filing requirements; carrying out all other duties related to the Qualified Settlement Fund's documentation and filing; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; providing status reports as needed, among other administrative duties; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for any errors or omissions in the calculation or distribution of the Individual Settlement Payments, Individual PAGA Payments, or any other distribution of monies contemplated by this Agreement.

67. Final Approval Hearing and Entry of Final Judgment

Upon expiration of the Response Deadline, with the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (a) the Class Counsel Award; (b) the Class Representative Enhancement Award; (c) Individual Settlement Payments; (d) the PAGA Payments to the LWDA and to PAGA Members and (e) Settlement Administrator Costs.

68. Final Approval Order

Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order and a Final Judgment. Plaintiff will request that the Final Approval Order certify the

Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement. The Parties shall jointly prepare the proposed Final Approval Order.

Class Counsel shall be responsible for preparing the Motion for Final Approval, and any Motion Requesting Attorney's fees, Costs, and Class Representative Enhancement Award, supporting declarations, and exhibits thereto, for final approval by the Court. Class Counsel agrees to provide Counsel for Defendant with drafts of all documents they intend to submit in support of their Motion for Final Approval and application for attorney's fees and costs at least five (5) calendar days in advance of filing to allow Counsel for Defendant a reasonable time to review and comment on such papers Plaintiff will review and consider in good faith any comments/edits Defendant's Counsel may propose to any final approval documents. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order.

69. Nullification of Agreement

In the event: (a) the Court denies preliminary approval of the Settlement; (b) the Court denies final approval of the Settlement; (c) the Court refuses to enter a Final Judgment as provided herein; or (d) the Settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.

To the extent that more than 10% of Class Members submit valid Requests for Exclusion, Defendant shall have the option to nullify this Settlement within ten (10) calendar days of notification by the Settlement Administrator after the Response Deadline of the total number of Requests for Exclusion, via a written notice to Plaintiff's counsel. If Defendant exercises this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the Defendant for terminating the Settlement.

70. Conditional Class Certification

The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of

any kind by Defendant, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiff can establish any of the requisite elements for class or representative treatment of any of the claims in these Actions.

If, for any reason, the Settlement is not approved, the Parties agree to attend mediation again, either before the same mediator or another mutually agreed upon mediator experienced in California wage and hour class actions, in an effort to reach a settlement that will be approved by the Court.

If, even after the second mediation, the Agreement is ultimately not approved by the Court, this Agreement will be void and the Parties will be restored to their respective positions as if they had not entered into the Agreement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (a) a class action should be certified or not decertified, or that this matter may proceed as a representative action; or (b) Defendant is liable to Plaintiff or any Settlement Class Member or any PAGA Member other than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise voided, Defendant expressly reserves all rights to challenge certification of a class, or Plaintiff's ability to maintain a representative action, for all purposes.

71. No Publicity

Prior to preliminary approval, the Parties agree not to disclose the terms of this Settlement except in court papers filed to seek approval or to make other disclosures jointly agreed to by the Parties in advance as necessary to effectuate the Settlement.

Before and after approval of this Settlement, Plaintiff and Class Counsel shall not issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the Settlement.

Nothing herein restricts Class counsel from fulfilling its duties to Class and PAGA Members. However, Class Counsel may (in future declarations submitted in Court) refer to the fact that this matter settled on a class and representative action basis, but only for the reason of detailing the experience of counsel. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the court.

72. No Effect on Employee Benefits

The Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Plaintiff, Participating Class Members, and PAGA Members. The Parties agree that any Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments paid to Plaintiff, Participating Class Members, and PAGA Members under the terms of this Settlement do not represent any modification of any previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by the Defendant. Further, any Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by the Defendant.

73. Representation

All of the Parties have been represented by counsel throughout all negotiations which preceded the execution of this Settlement, and all Parties have been advised by counsel prior to entering into this Settlement.

Plaintiff and his Counsel represent that other than the Single Plaintiff Action, Plaintiff and his Counsel do not currently represent any other current or former employees of Defendant in connection with any actual or planned claims, charges, complaints, or other matters against Defendant, and Plaintiff Counsel are not aware of any current or former employees of Defendant who are planning to bring any claims, charges, Complaints, or other matters against Defendant.

74. Exhibits and Headings

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

75. Interim Stay of Proceedings

Upon full execution of this Agreement, the Parties agree to jointly request the Court to stay proceedings except for the proceedings necessary to implement and complete the Settlement.

76. Amendment or Modification

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

77. Entire Agreement

This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering into this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

78. Authorization to Enter into Agreement

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The person signing this Agreement on behalf of the Defendant represents and warrants that he or she is authorized to sign this Agreement on behalf of the Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

79. Binding on Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

80. California Law Governs

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

81. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

82. Jurisdiction of the Court

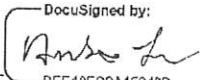
Pursuant to California Code of Civil Procedure section 664.6, and section 41(a) of the Federal Rules of Civil Procedure, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all connected orders and judgments.

83. Invalidity of Any Provision

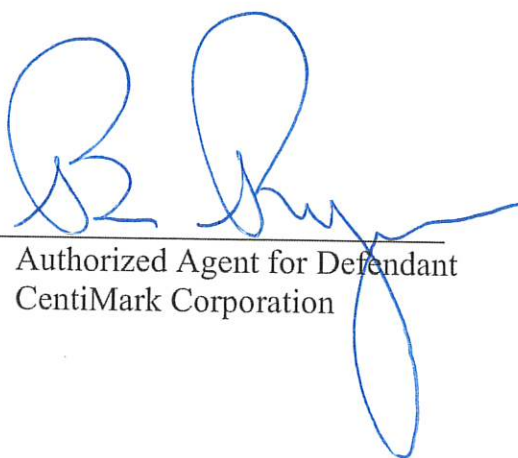
Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiff, on behalf of himself and the Participating Class Members and the PAGA Members, and Defendant have executed this Agreement as of the dates set forth below.

Date: 11/14/2023

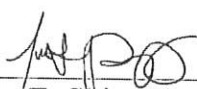
By: 
Anthony Lingle, Plaintiff

Date: 11/20/23

By: 
Authorized Agent for Defendant
CentiMark Corporation

APPROVED AS TO FORM

Date: 11/14/2023

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
Counsel for Plaintiff

Date: 11/17/23

By: 
Michael J. Nader
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Counsel for Defendant
CentiMark Corporation

EXHIBIT A

United States District Court for the Eastern District of California
Anthony Lingle v. CentiMark Corporation
Case No. 2:22-cv-01471-JDP,

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

To: **Class Members:** All non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for CentiMark in California, and who have not signed, or opted out of, an arbitration agreement, during the Class Settlement Period from July 11, 2018 to November 19, 2023.

PAGA Members: All non-exempt employees, excluding any individuals employed solely as office or administrative staff, who have or continue to work for CentiMark in California during the PAGA Settlement Period of May 17, 2021 to November 19, 2023.

A putative class action and representative action under the California Private Attorneys General Act of 2004 (“PAGA”), which was brought on behalf of the Class and PAGA Members (defined above) and against Defendant CentiMark Corporation (the “Defendant”) has been settled for \$600,000. As explained in this Notice, if the Court approves this Class and PAGA Settlement then you may receive payments under this Settlement. You are receiving this Notice because the Defendant’s records indicate that you are a Class Member and/or a PAGA Member.

If you are a Class Member and/or a PAGA Member, you are eligible for payment from the Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE YOUR SETTLEMENT CHECK	If you want to participate and receive your share of the money from the Class and PAGA settlement, you do <u>not</u> need to do anything. If you do nothing, you will be mailed a settlement payment and you will release certain claims. <i>Please note that you must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.</i>
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT AND <u>NOT</u> RECEIVE A CLASS SETTLEMENT CHECK	If you ask to be excluded from the Class portion of the settlement and money is later awarded to the Settlement Class, then you will not receive any share from the class settlement money. But if you exclude yourself, you keep any rights as an individual to sue Defendant separately about the same legal claims that are being settled here. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is [45 calendar days from date of mailing].

	If you are a PAGA Member, even if you exclude yourself from the class action, you will still receive a portion of the PAGA settlement money and be bound by the release of PAGA claims.
OBJECT	Object to the Settlement if you think the Settlement is not fair by sending your written objection to the Settlement Administrator and, if you wish, appear at the Final Approval Hearing. If you submit a Request for Exclusion from the Settlement, you cannot also object to it. The deadline to submit an objection is [45 calendar days from date of mailing].

- **Your rights and options – and the deadlines to exercise them – are explained in this Notice.**
- **Defendant supports the settlement and will not retaliate in any manner against any class member for any reason, including whether they decide to remain in the class and receive a settlement payment, or choose another option provided in this notice.**

BASIC INFORMATION

1. **Why was this notice issued?**

A Court authorized this Notice because you have a right to know about a proposed Settlement of a class and representative PAGA action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. This notice explains the lawsuit, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the United States District Court for the Eastern District of California, and the case is known as *Anthony Lingle v. CentiMark Corporation*, U.S.D.C. Eastern District of CA, Case No. 2:22-cv-01471-JDP (the “Action” or the “Lawsuit”).

2. **What is the Lawsuit about?**

On December 2, 2021, Plaintiff Anthony Lingle filed a putative class action complaint alleging several wage and hour claims against Defendant. On November 19, 2021, Plaintiff Lingle filed a PAGA Letter with the LWDA seeking PAGA civil penalties for alleged wage and hour violations by the Defendant. On July 22, 2022, Plaintiff Lingle filed a First Amended Complaint that included the PAGA claim. On October 7, 2022, Plaintiff Lingle filed a Second Amended Complaint as a class and representative action alleging wage and hour violations, including that Defendant allegedly failed to provide minimum and overtime wages, failed to provide compliant meal and rest breaks, failed to provide compliant wage statements, failed to provide final wages, failed to reimburse business expenses, unfair competition and related PAGA claims.

Defendant denies all of the claims in the Lawsuit. However, Defendant have agreed to settle the Lawsuit to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated.

3. **What is a class action?**

In a class action lawsuit, a Plaintiff who is called a Class Representative (in this case, Anthony Lingle) sues on behalf of others (called a class or class members) who may have similar claims.

4. **Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff or of the Defendant. Instead, both sides agreed to a no-fault settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of further litigation including a trial, and the putative class members will receive money from the Settlement.

5. **Who are the Parties in these Lawsuits?**

Plaintiff Anthony Lingle is a former employee of the Defendant. The Defendant is CentiMark Corporation.

6. **Who are the Attorneys representing the Plaintiffs and the Class?**

Add here

You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

THE TERMS OF THE SETTLEMENT

7. **What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$600,000 to fully and finally resolve all claims in the Lawsuit (referred to as the “Total Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of up to \$200,000 (one-third of the Total Settlement Amount); litigation costs estimated at \$15,000; a “Class Representative Enhancement Payment” of up to \$10,000 for the Plaintiff’s work and effort in prosecuting this Lawsuit, risks taken for the payment of costs in the event of a loss to the Defendant, and in exchange for a general release of all claims; settlement administration expenses of up to \$15,000; and a \$140,000 “PAGA Payment” to the California Labor Workforce and Development Agency (“LWDA”) and PAGA Members in settlement of claims for penalties under PAGA. The exact amounts of these payments will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount (“NSA”), is estimated to be \$220,000. The NSA will be apportioned and paid out entirely, automatically, to all “Participating Class Members” who are the Settlement Class Members who have not asked to be excluded from the Settlement. They each will receive an “Individual Settlement Payment.”

No portion of the Total Settlement Amount will revert to Defendant under any circumstances.

8. **How will the Individual Settlement Payments be calculated and how much will my award be?**

Participating Class Members will receive a pro-rata share of the NSA based on the number of weeks they worked for Defendant during the time period from July 11, 2018 to November 19, 2023 (the “Class Settlement Period”).

Here’s how it works – the NSA will be entirely distributed to the Participating Class Members. The NSA allocated to each individual Participating Class Member will be based on the individual’s total number of weeks worked during the Class Settlement Period, in relation to the total number of weeks worked by all Participating Class Members. The counts of weeks worked will be calculated according to Defendant’s records.

Based on Defendant' records, you worked ____ weeks during the Class Settlement Period and your estimated Individual Settlement Payment is \$_____. Although the actual amount that is paid may be lower or higher than the amount estimated. If you wish to dispute your number of workweeks during the Class Settlement Period, you must notify the Settlement Administrator in writing no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of weeks during the Class Settlement Period.

Individual Settlement Payments are allocated as 80% penalties and interest, and 20% as wages. You will be responsible for the tax consequences of your Individual Settlement Payment, for filing your own tax returns, for reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. You should consult with a tax advisor concerning the tax consequences of the Individual Settlement Payment you could receive under the Settlement.

9. How will the PAGA Payment be distributed?

The Parties will seek approval from the Court to designate \$140,000 of the Total Settlement Amount as penalties recoverable under the PAGA. 75% of this amount, or \$105,000, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$35,000, will be distributed to the PAGA Members as "Individual PAGA Payments." The Individual PAGA Payments are paid in addition to any Individual Settlement Payments (the Individual Settlement Payment and the Individual PAGA Payments are the "Settlement Payment"). 100% of the PAGA Payment will be treated as civil penalties. You should consult with a tax advisor concerning the tax consequences of the Individual PAGA Payment you could receive under the Settlement.

Not all Class Members will also qualify as PAGA Members entitled to an Individual PAGA Payment. You are only a PAGA Member if you worked for Defendant during the period from May 17, 2021 to November 19, 2023 (the "PAGA Settlement Period"). The Individual PAGA Payments will be calculated on a pro-rata basis based on the number of pay periods that you worked during the PAGA Settlement Period. Based on Defendant's records, your total pay periods worked during the PAGA Settlement Period is _____. Based on that number, your anticipated approximate Individual PAGA Payment is \$_____. If you wish to dispute your number of pay periods worked during the PAGA Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of pay periods during the PAGA Settlement Period.

HOW TO GET PAYMENT

10. How can I get my Settlement Payment?

If the Settlement is approved, you do not need to do anything to receive a Settlement Payment. If the Court approves the Settlement at a final approval hearing, your Settlement Payment will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Settlement Payment will be mailed to the last known address it has on file for you** if the Court approves the settlement.

11. When can I expect to receive my Settlement Payment?

If the Court approves the Settlement, and there are no pending objections, your share of the Settlement will be paid approximately **30 days** after the Court grants final approval of the Settlement. ***Your share of the Settlement will be mailed to the address on file for you.*** Again, if this address is not correct, or if you move after you receive

this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at 800-_____.

12. What am I giving up to get a Settlement Payment?

Participating Class Members will be giving up or “releasing” the claims described below:

Release of Class Claims: After the Court grants final approval of the Settlement, each Participating Settlement Class Member will be bound by the approval and judgment and thereby releases Defendant CentiMark Corporation and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, benefit plans, subsidiaries, affiliates, successors, and assigns (the “Released Parties”) from all claims and/or causes of action against the Released Parties that were or could have been alleged based on the allegations in the Action, including all class claims stated in the Action alleging violations of Labor Code sections 201, 202, 203, 221, 223, 225, 226(a), 226 et seq, 226.3, 226.7, 245 et seq, 256, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 2802, and IWC Wage Order 16, including, inter alia, sections 3, 4, 11, 12, and section 17200 et seq of the California Business and Professions Code, and: (a) All claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, including driving time, and the alleged failure to pay for all time worked at correct rates; (b) All claims for unpaid wages due to alleged rounding of records of time worked and meal periods; (c) All claims for unpaid regular rates, including regular rates for overtime and double-time wages, meal and rest break premium wages, and paid sick leave; (d) All claims for meal period violations, including claims for (1) first and second meal periods, (2) short, late, missed, interrupted, “on call,” and otherwise improperly controlled meal periods, (3) the failure to pay premium wages, (4) the failure to pay premium wages at the correct regular rates, and (5) the failure to properly record meal periods; (e) All claims for rest break violations, including claims for (1) first, second, third, and fourth rest breaks, (2) short, late, missed, interrupted, “on call” rest breaks and otherwise improperly controlled rest breaks, (3) the failure to pay premium wages, and (4) the failure to pay premium wages at the correct regular rates; (f) All claims for paid sick leave violations, including the failure to (1) accurately accrue paid sick leave, (2) accurately provide notice of accrued sick leave, (3) accurately provide paid sick leave, and (4) provide paid sick leave at the correct regular rates. (g) All claims for the untimely payment of final wages and associated waiting time penalties under sections 201 to 203 of the Labor Code; (h) All claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phones, tools and materials for work, and meal expenses; (i) All claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the allegations in the Action, including the allegations that wage statements lacked the total number of hours worked and corresponding rates, including regular rates, and including claims for injuries suffered therefrom; (j) All claims for the alleged failure to keep accurate records in violation of Section 1174 of the Labor Code; (k) All claims for failure to pay contract wages or for making unlawful deductions from wages in violation of Sections 221, 223, and 225 of the Labor Code; (l) All claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claims, and causes of action alleged in the Action; and (m) All claims for statutory penalties, liquidated damages, punitive damages, interest, attorney’s fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief based on the allegations in the Action.

PAGA Members and the State of California will be giving up or “releasing” claims for civil penalties under PAGA:

Release of PAGA Claims: After the Court grants final approval of the Settlement, then Plaintiff, as a representative of the State of California and on behalf of the LWDA and the PAGA Members, will fully and finally release the Released Parties from all claims and causes of action for PAGA penalties against the Released Parties that were or could have been alleged based on the allegations in the Action, including all claims for PAGA penalties based on alleged violations of Labor Code sections 201, 202, 203, 221, 223, 225, 226(a), 226 et seq, 226.3, 226.7, 245 et seq, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1193.6, 1194, 1194.2, 1197,

1197.1, 2802, and IWC Wage Order 16, including, inter alia, sections 3, 4, 11, 12, and: (a) All claims for PAGA penalties based on the alleged failure to pay wages earned, including minimum, overtime, and double-time wages, the alleged failure to pay for all time worked including driving time, and the alleged failure to pay for all time worked at correct rates; (b) All claims for PAGA penalties based on the alleged failure to pay for all time worked due to rounding of records of time worked and meal periods; (c) All claims for PAGA penalties based on the alleged failure to pay regular rates, including regular rates for overtime and double-time wages, meal and rest break premium wages, and paid sick leave; (d) All claims for PAGA penalties based on the alleged failure to provide compliant meal periods, including claims for (1) first and second meal periods, (2) short, late, missed, interrupted, “on call,” and otherwise improperly controlled meal periods, (3) the failure to pay premium wages, (4) the failure to pay premium wages at the correct regular rates, and (5) the failure to properly record meal periods; (e) All claims for PAGA penalties based on the alleged failure to provide compliant rest breaks, including claims for (1) first, second, third, and fourth rest breaks, (2) short, late, missed, interrupted, “on call” and otherwise improperly controlled rest breaks, (3) the failure to pay premium wages, and (4) the failure to pay premium wages at the correct regular rates; (f) All claims for PAGA penalties for alleged paid sick leave violations, including the failure to (1) accurately accrue paid sick leave, (2) accurately provide notice of accrued paid sick leave, (3) accurately provide paid sick leave, and (4) provide paid sick leave at the correct regular rates. (g) All claims for PAGA penalties for the untimely payment of final wages under sections 201 to 203 of the Labor Code Section; (h) All claims for PAGA penalties for allegedly unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phones, tools and materials for work, and meal expenses; (i) All claims for PAGA penalties for allegedly improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the allegations in the Action, including the allegations that wage statements lacked the total number of hours worked and corresponding rates, including regular rates, and including claims for injuries suffered therefrom; (j) All claims for PAGA penalties for the alleged failure to keep accurate records in violation of Section 1174 of the Labor Code; (k) All claims for PAGA penalties for the alleged failure to pay contract wages or for making unlawful deductions from wages in violation of Sections 221, 223, and 225 of the Labor Code; (l) And all other claims for PAGA penalties alleged in the Action.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. Can I exclude myself from the class settlement?

If you do not wish to participate in the class settlement for whatever reason, you can exclude yourself from the class settlement (that is, “opt out” of the Settlement). If you opt out, you keep your right to sue the Defendant for the same claims on an individual basis. However, you cannot opt out of the PAGA portion of the Settlement. To opt out and exclude yourself from the Class and this Settlement so that you do not become a Participating Settlement Class Member, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class. The letter must state in substance:

“I have read and understand the Notice of Settlement of Class and Representative Action and I wish to exclude myself from the Settlement described in the Notice.”

Your letter requesting to exclude yourself must include the case name, *Anthony Lingle v. CentiMark Corporation*, U.S.D.C. Eastern District of CA, Case No. 2:22-cv-01471-JDP, your full name, current address and telephone number. It must be addressed to the Administrator at [address], postmarked on or before _____, 2023. [45 days from mailing of Notice] Requests for exclusion postmarked after this date may be disregarded.

14. If I don't exclude myself from the class settlement, can I sue Defendant for the same thing later?

No. Unless you exclude yourself from the class settlement, you give up any right to sue Defendant for the claims that this Settlement resolves.

15. If I exclude myself from the class settlement, can I get money from this settlement?

No, not from the Class Settlement. If you request to be excluded from the Settlement, you will not receive an Individual Settlement Payment. You also will not be able to object to the Settlement as explained below. Your Individual Settlement Payment will be redistributed to the Participating Class Members.

However, if you are a PAGA Member, you will receive an Individual PAGA Payment regardless of whether you exclude yourself from the class settlement.

No portion of the Total Settlement Amount will go back to Defendant as a result of any person opting out of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, and you don't request to be excluded from the class settlement, you can object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it before the Court decides whether to grant final approval of the Settlement.

To object in writing, you must submit a timely written objection to the Administrator. Your objection must state that you object to the proposed Settlement of this case entitled *Anthony Lingle v. CentiMark Corporation*, U.S.D.C. Eastern District of CA, Case No. 2:22-cv-01471-JDP. Be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail your written objection to the Administrator at [address], postmarked on or before _____, 2023. [45 days from mailing of Notice Packet] Requests for exclusion postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact attorneys for Plaintiffs and the Class (see Paragraph 6 above) or the Settlement Administrator. Please **DO NOT** contact attorneys for Defendant or any of the Defendant's managers, supervisors, or owners.

THE COURT'S FINAL FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department ___ of the U.S. District Court for the Eastern District of California, located at _____ on _____, 2024, at ___ a.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representatives' Enhancement Awards, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions from the Judge. But you are welcome to come at your own expense to support or object to the settlement. If you send your timely written objection to the Settlement Administrator, you don't have to come to Court to object but you can if you wish to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and if required pay your own lawyer to attend if you so desire.

19. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak, however, to be sure that any objection will be considered by the Court, you should submit a timely written objection, or a notice of intent to appear at the hearing. To do so, please timely submit the objection or notice of intent to appear to the Settlement Administrator listed in section 16 no later than *[45 days after mailing of postcard.]* Any notice of intent to appear should include a description of any arguments you intend to make.

GETTING MORE INFORMATION**20. Who may I contact if I have questions about the settlement?**

This Notice is only a summary of the Lawsuit and proposed Settlement. For more information, you may personally inspect the files and the Settlement Agreement at the U.S. District Court for the Eastern District of California located at the _____, during regular Court hours. You may also contact Class Counsel if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to Settlement Administrator, at **[insert address]**.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT OR ANY OF THEIR MANAGERS, SUPERVISORS, OWNERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file, as this will be the address to which your Settlement Payment will be sent if the Settlement is approved.

B. Settlement Payment checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the Salvation Army Sacramento Metro. If your Settlement Payment check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
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Attorneys for Plaintiff ANTHONY LINGLE,
individually and on behalf of all other similarly situated employees

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 2:22-cv-01471-JDP

Sacramento County Superior Court
Case No. 34-2021-00311991

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff ANTHONY LINGLE (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees, hereby files this Second Amended Complaint against Defendants CENTIMARK
3 CORPORATION, a Pennsylvania Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to pay minimum wages, failure to pay overtime wages, meal period violations, rest
8 period violations, wage statement violations, failure to timely pay final wages, failure to reimburse
9 expenses, and unfair competition, statutory penalties, and civil penalties for violations of the California
10 Labor Code.

11 **JURISDICTION AND VENUE**

12 2. The United States District Court for the Eastern District of California has jurisdiction in
13 this matter under the Class Action Fairness Act. *See* 28 U.S.C. § 1332(d).

14 3. Venue is proper as this action was removed to the district court in which the state court
15 action was pending. *See* 28 U.S.C. §§ 1390(c), 1441(a).

16 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
17 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
18 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
19 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
20 (“LWDA”) on approximately November 19, 2021. Plaintiff provided facts and legal bases for his
21 claims within the notice to the LWDA on all violations asserted under the PAGA cause of action.
22 Plaintiff also submitted the \$75.00 filing fee. The November 19, 2021, notice was also sent via certified
23 mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff’s
24 notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the
25 PAGA and may bring this action on behalf of himself and all similarly situated employees, *i.e.*
26 aggrieved employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup.*
27 *Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees include, but are not
28 limited to the following: all non-exempt employees who have or continue to work for Defendants in

1 California from November 19, 2020 to the present, excluding any individuals employed solely as office
2 or administrative staff.

3 **PARTIES**

4 5. ANTHONY LINGLE is an individual over the age of eighteen (18) and is a resident
5 of the State of California.

6 6. On information and belief, Plaintiff alleges, CENTIMARK CORPORATION, is now
7 and/or at all times mentioned in this Complaint was Pennsylvania Corporation and the owner and
8 operator of an industry, business and/or facility doing business in the State of California.

9 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
10 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
11 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
12 names and capacities of these DOE Defendants when they are ascertained.

13 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
14 other Defendants and was acting within the course and scope of such agency or employment. The
15 Defendants are jointly and severally liable to Plaintiff.

16 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
17 were members of and/or engaged in a joint employment, joint venture, partnership and common
18 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
19 joint venture, partnership and common enterprise.

20 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
21 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

22 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
23 wrongs, complaints, injuries and/or damages alleged in this Complaint.

24 **CLASS ALLEGATIONS**

25 12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
26 others similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23. The class
27 that Plaintiff seeks to represent is composed of and defined as follows:
28

UCL Class: All non-exempt employees who have or continue to work for Defendants in California from July 11, 2018, to the present, excluding any individuals employed solely as office or administrative staff.

Non-UCL Class: All non-exempt employees who have or continue to work for Defendants in California from December 2, 2018, to the present, excluding any individuals employed solely as office or administrative staff

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of Federal Rule of Civil Procedure 23, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed over (100) individuals falling within the above stated class definitions throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid Plaintiff and putative class members for all hours worked, including drive time to the first worksite;
- (2) Whether Defendants paid Plaintiff and putative class members all overtime wages they were owed;
- (3) Whether Defendants had a policy or practice of failing to take into account all compensation paid, to calculate their regular rates of pay;
- (4) Whether Defendants failed to authorize and permit Plaintiff and putative class members to take meal periods;
- (5) Whether Defendants failed to authorize and permit Plaintiff and putative class members to take rest periods;

- 1 (6) Whether Defendants failed to authorize and permit second meal periods and third
2 rest periods when Plaintiff and putative class members worked over 10 hours in a
3 day;
- 4 (7) Whether Defendants failed to authorize and permit Plaintiff and putative class
5 members to begin meal periods before the end of their fifth hour of work;
- 6 (8) Whether as a result of Defendants' policies and practices Plaintiff's and putative
7 class members received all wages, due and owing, at the time of their termination
8 or separation; and
- 9 (9) Whether Defendants provided Plaintiff's and putative class members with wage
10 statements that complied with Labor Code section 226.
- 11 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
12 class. The putative class also sustained damages arising out of Defendants' common
13 course of conduct in violation of the law as complained of herein. Plaintiff and all
14 members of the putative class were non-exempt employees who were not paid for all
15 hours worked and all overtime wages earned, did not receive all meal and rest periods,
16 and were not reimbursed for the use of their personal cellphones. Additionally,
17 Defendants issued Plaintiff and all members of the putative class wage statements that
18 did not comply with Labor Code section 226. As a result, Plaintiff and each member of
19 the putative class will have suffered the same type of harm and seek the same type of
20 recovery based on the same legal theories.
- 21 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
22 putative class. For all relevant times, Plaintiff resided in California and worked for
23 Defendants in California. Moreover, Plaintiff is an adequate representative of the
24 putative class as Plaintiff has no interests that are adverse to those of putative class
25 members. Additionally, Plaintiff has retained counsel who has substantial experience in
26 complex civil litigation and wage and hour matters.
- 27 (e) Superiority: A class action is superior to other available means for the fair and efficient
28 adjudication of the controversy since individual joinder of all members of the putative

class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff worked for Defendants from approximately November 1, 2019, to October 2021, as an hourly, non-exempt employee. Similarly situated employees also worked for Defendants as non-exempt, hourly employees. Plaintiff and similarly situated employees did not work as office or administrative staff. Rather, Plaintiff and similarly situated employees performed work in crews as laborers, apprentices, roofers, and/or flooring installers. Defendants generally divide the type of work for non-office/administrative staff into two categories, either service or production. Plaintiff performed work as a laborer and roofer in both the service and production department. Plaintiff is informed and believes that the general worksite conditions are similar for those employed in the flooring department as any and all policies Defendant communicated to Plaintiff and similarly situated employees did not note any distinction or special exemptions for individuals depending on what department they worked in. Defendant's policies and practices were always communicated as being generally applicable to all non-exempt employees and/or its field personnel. For example, Defendants' handbook states the scope of employees it applies to is "Field Personnel" with no distinction among different categories of

1 employees. Similarly, Defendants would issue policies that directly identified the scope of applicability
2 to all similarly situated employees. For example, one such statement of applicability in Defendants’
3 policy on non-overnight travel reads as follows: “This policy applies to all Non-Exempt Employees who
4 visit one customer facility in a particular day (i.e. to perform Production and/or “28” Jobs). It also
5 applies to Production Field Supervisors who visit more than one customer job site in a particular day.”
6 The policy goes on to define Non-Exempt Employees as “any Non-Exempt member of a roofing or
7 flooring crew and the foreman on such a crew and other Non-Exempt Employees.” Furthermore,
8 Plaintiff worked all across California and the general working conditions complained of herein
9 continued regardless of location. Locations Plaintiff worked include, but are not limited to, Shasta,
10 Folsom, Modesto, Taft, Tracy, Stockton, Roseville, Fairfield, Lincoln, and Wheatland.

11 17. Plaintiff and similarly situated employees were regularly scheduled to work more than
12 forty (40) hours per week. Plaintiff and similarly situated employees regularly worked five (5) to seven
13 (7) days per week on production jobs and five (5) to six (6) days per week on service jobs. Plaintiff and
14 similarly situated employees generally worked eight (8) to ten (10) hours per day on the job site.
15 Including drive time from the first place Plaintiff and similarly situated employees were required to
16 appear would increase these daily hours to approximately twelve (12) to fourteen (14) hours a per day or
17 more. Defendants failed to pay Plaintiff and similarly situated employees for all hours spent driving for
18 work purposes, including drive time from Defendants’ Roseville location/shop, or the designated meet
19 up location, to the job site. Plaintiff and similarly situated employees had to obtain materials and
20 equipment necessary to complete their job tasks from Defendants’ shop, or meet up location, and then
21 transport these materials to various worksites across California on a weekly and/or daily basis. This
22 time was supposed to be paid as travel time and/or zone pay or both, but Defendants failed to make these
23 payments approximately 30%-40% of the time despite managers and/or supervisors telling Plaintiff and
24 similarly situated employees to appear at these starting locations. For example, during the week of June
25 14, 2021, Plaintiff traveled approximately 3 hours from the designated meeting place, as defined in
26 Defendant’s policies, to a job site in Shasta, but these hours worked were not paid. Plaintiff worked on
27 the jobsite for approximately 9.7 hours in addition to the travel time on that day. Thus, Defendant’s
28 policies and practices resulted in unpaid minimum wages and overtime.

18. Additionally, Plaintiff and similarly situated employees earned remuneration in addition to their basic hourly rate, including, but not limited to, bonuses and zone pay. Bonuses could be earned by Plaintiff and similarly situated employees regardless of whether they worked a production job or a service job. The amount of the bonus was calculated based on the number of hours each job was scheduled to take, *i.e.* budgeted, and how far under that budgeted amount the job was able to be completed in. For example, if a job was budgeted to take 5,000 hours, but Plaintiff and similarly situated employees working on the job finished it in 4,750 hours, each of those individuals would be entitled to a bonus of \$1 per hour under (\$250). Defendants' zone pay policy specifically stated that it would be paid to Plaintiff and similarly situated employees regardless of whether they drove to a job site or rode as a passenger. The amount paid via zone pay would vary based on the distance travelled, *e.g.* \$0, \$7.50, or \$15.00, etc. Defendants maintain a meal and rest period policy that expressly applies to all non-exempt employees, including those in roofing and flooring, and states any meal and rest period premiums are paid at regular time, not the regular rate of pay.

19. The bonuses and zone pay were not properly accounted for when calculating Plaintiff's and similarly situated employees' regular rate of pay for overtime, sick leave, and meal and rest period premium purposes. For example, Plaintiff was paid a \$174 bonus during the 6/1/20 to 6/7/20 pay period. The jobs Plaintiff and similarly situated employees worked on lasted 2-3 weeks or longer. However, the amount paid for overtime on the paystub corresponding to this period (\$11.00) does not even account for the amount of overtime hours worked during this period in which the bonus was paid, let alone the accumulation of overtime hours during the preceding weekly pay periods that the bonus was earned over (*e.g.* $[\$174 / 47.35] / 2 = \$1.84$. $\$1.84 \times 7.35$ total overtime hours = \$13.53). The rest period premiums that Defendant's did pay were only paid at the basic rate of pay, not the modified rate of pay. For example, during the pay period immediately preceding 6/1/20-6/7/20, there was a rest period premium paid only at the basic hourly rate at the time, despite the bonus being earned over this same period. Similar instances occurred with the zone pay in, for example, the 7/6/20 to 7/12/20 pay period, 7/27/20 to 8/2/20 pay period, 8/24/20 to 8/30/20 pay period, and 9/14/20 to 9/20/20 pay period. The zone pay was also consistently underpaid both because it was often less than the contracted 'zone pay' rate or amounted to less than Plaintiff and similarly situated employees' hourly rate for all hours

1 worked. Thus, Plaintiff and similarly situated employees are owed unpaid overtime, sick leave, and
2 meal and rest period premiums.

3 20. Defendants, further, did not authorize and permit Plaintiff and similarly situated
4 employees to take a full, uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10)
5 minute rest periods every four (4) hours or major fraction thereof. Defendants further did not authorize
6 and permit Plaintiff and similarly situated employees a second meal break after working more than ten
7 (10) hours, or a second or third rest period after working more than eight (8) and twelve (12) hours. In
8 fact, it was Defendants' expectation that Plaintiff and similarly situated employees would remain on call
9 during break time while driving to and from the work site and while at the actual job site. Plaintiff and
10 similarly situated employees had to remain on site and on call on job sites for various safety issues (*e.g.*
11 fire watch), inspections to be completed, and/or receiving of any onsite deliveries. Additionally, many
12 of the job sites required special access badges to be able to leave and return to the premises, but they
13 regularly expired and/or were damaged from environmental elements related to the job sites (*e.g.*
14 extreme heat on roofs) and Defendants would not procure replacements for extended periods of time.
15 For example, these issues occurred while Plaintiff worked on a jobsite at Primo Foods, but Plaintiff was
16 not paid a meal or rest period premium for each day he worked on this jobsite. Furthermore,
17 Defendants' policy was to have foreman track time through the use of a mobile time app on a single cell
18 phone, which rounded employee meal period times, resulting in the appearance of at least thirty minute
19 meal periods when, in actuality, the actual time of the meal period was less than thirty (30) minutes.
20 Additionally, foreman would clock Plaintiff and similarly situated employees out without their
21 knowledge, resulting in their being unable to take a full meal period because they would be required to
22 begin working again within thirty (30) minutes from the original clock out. A similar issue occurred at
23 the end of the workday when employees were clocked out by a foreman, though continued to work.

24 21. Finally, Defendants failed to reimburse Plaintiff and similarly situated employees for all
25 expenses they incurred for work, including the use of their personal cellphones. For instance, Plaintiff
26 and similarly situated employees were required to use their personal phones to consistently
27 communicate with office staff and management while at the work site or driving. These calls and/or
28 texts covered work issues such as job site access or directions, status of the work performed, sending

1 pictures to demonstrate job site conditions, and coordinating coverage if one of the crew members was
 2 absent and additional labor was needed. Defendants' managers and supervisors were aware of Plaintiff
 3 and similarly situated employees using their personal cell phones for these purposes because these
 4 managers would regularly initiate and/or respond these calls and/or text messages to Plaintiff and
 5 similarly situated employees on a weekly, sometime daily basis. Defendants' managers also required
 6 Plaintiff and similarly situated employees to call in to the office and/or their foreman Sunday afternoons
 7 and/or evenings to find out if they were scheduled to work the next day, where to they were required to
 8 meet, and what time they were required to meet. This took anywhere from ten (10) minutes to several
 9 hours depending on the day. Defendants failed to have any policy or practice to reimburse Plaintiff and
 10 similarly situated employees for such use. In fact, where Plaintiff had made requests for reimbursement
 11 before, Jeff Bushey, a Production Field Supervisor who was one of Plaintiff's supervisors, cursed at
 12 Plaintiff, told Plaintiff he was lucky to have a job, and that, if Plaintiff kept complaining about
 13 unreimbursed expenses, he would be on the unemployment line. Plaintiff estimates that approximately
 14 50% to 75% of his total phone usage during his employment was for the work purposes identified here
 15 and his cell phone bill was approximately \$83.00 a month.

16 22. As a result of these practices, Defendants failed to provide Plaintiff and similarly situated
 17 employees with accurate wage statements. The wage statements did not accurately itemize Plaintiff's
 18 and similarly situated employees' total hours worked, all applicable hourly rates in effect during the pay
 19 period and the corresponding number of hours worked at each hourly rate, and the correct amount of
 20 gross and net wages earned, including meal and rest period premiums.

21 23. At the time of Plaintiff's and similarly situated employees' termination and/or separation,
 22 Plaintiff and similarly situated employees had regular and overtime wages owing to them, meal and rest
 23 period premiums, and paid sick time. To date, Defendants have not paid Plaintiff and similarly situated
 24 employees these unpaid wages.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Non-UCL Class vs all Defendants)

24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully set forth herein.

25. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, section (3)(A); Cal. Lab. Code §§ 510, 1194.

26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at 1.5x their regular rate of pay.

27. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Non-UCL Class vs. all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code § 1194.

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31. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

32. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(Non-UCL Class vs. all Defendants)

33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully set forth herein.

34. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

35. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

36. California Labor Code section 512 and Wage Order No. 16 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

37. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

38. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

39. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(Non-UCL Class vs. all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

42. California Labor Code section 226.7 and Wage Order No. 16, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

44. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(Non-UCL Class vs. all Defendants)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

47. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

48. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' failure to pay for all hours worked. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Non-UCL Class vs. all Defendants)

50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully set forth herein.

51. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

52. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

53. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

54. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid for all hours worked, or paid the proper rate of pay for all hours worked, because it was Defendants' practices that authorized these under payments and Defendant had access to all of Plaintiff's and similarly situated employees time and employment records demonstrating their entitlement to these wages and premiums. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(Non-UCL Class vs. all Defendants)

57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully set forth herein.

58. California Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

59. Defendants required Plaintiff and similarly situated employees to use their personal phones and tools for work purposes but failed to reimburse them for such use. Further, while on out-of-town jobs, Defendants failed to properly reimburse Plaintiff and similarly situated employees for their meals.

60. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(UCL Class vs. all Defendants)

61. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully set forth herein.

62. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions (“B&P”) Code § 17200.

63. Plaintiff and similarly situated employees were not paid all sick leave wages owed during their employment or any time thereafter. Plaintiff lacks an adequate remedy at law for this violation because there is no private right of action for any violation of California Labor Code section 245 *et. seq.*

1 Instead, an individual is statutorily limited to only recovering equitable remedies, including restitution,
2 under the statute.

3 64. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
4 California Unfair Competition Law (“UCL”) (Business and Professions Code 17200, *et seq.*) pursuant to
5 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

6 65. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the
7 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
8 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
9 sections 17203, 17208, for violation of California Labor Code sections 245 *et seq.* all in an amount as
10 yet unascertained but subject to proof at trial, for four (4) years from the initial filing of this Action.

11 **NINTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEYS GENERAL ACT**
13 **(As to all Defendants)**

14 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
15 set forth herein.

16 67. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
17 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
18 current and former employees:

- 19 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay
20 Overtime Wages)
- 21 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
22 Minimum Wages)
- 23 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B)
24 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 25 • Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide
26 Rest Periods or Pay Premiums in Lieu Thereof)
- 27 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 28 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

68. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

69. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

70. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:

- 1 a. Wages in an amount to be proven at trial;
- 2 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 3 section 1021.5;
- 4 5. As to the Fourth Cause of Action:
- 5 a. Wages in an amount to be proven at trial;
- 6 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 7 section 1021.5;
- 8 6. As to the Fifth Cause of Action:
- 9 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 10 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 11 violation occurred and one hundred dollars (\$100.00) per employee for each
- 12 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 13 (\$4,000.00);
- 14 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 15 226(e);
- 16 7. As to the Seventh Cause of Action:
- 17 a. An amount to be proven at trial;
- 18 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 19 8. As to the Ninth Cause of Action:
- 20 a. For civil penalties as provided in the Labor Code for each enumerated
- 21 violation;
- 22 b. For those Labor Code sections where there is no civil penalty provided for their
- 23 violation, the default penalty provided in Labor Code section 2699(f): for any
- 24 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 25 period; For any subsequent violation, two hundred dollars (\$200) for each
- 26 aggrieved employee per pay period;
- 27 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 28

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

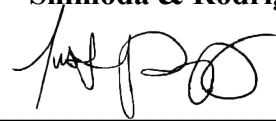
9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: October 7, 2022

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

Lingle v. Centimark Corporation
Eastern District of CA, Case No. 2:22-CV-01471-JDP

PROOF OF SERVICE — F.R.C.P., Rule 5

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On October 7, 2022, I served the following documents on the party below:

- SECOND AMENDED COMPLAINT FOR DAMAGES

Michael J. Nader (SBN 200425) Paul M. Smith (SBN 306644) Danielle Ocs (SBN 178677) OGLETREE DEAKINS NASH SMOAK & STEWART, P.C., 500 Capitol Mall, Suite 2500 Sacramento, CA 95814 Telephone: (916) 840-3150 Facsimile: (916) 840-3159 Email: paul.smith@ogletree.com Michael.Nader@ogletreedeakins.com maria.davis@ogletreedeakins.com noreen.witt@ogletreedeakins.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2022, at Elk Grove, California


Elias Tapia

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

November 19, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Lingle v. Centimark Corporation, et al.*

Dear Labor Commissioner,

As counsel for Anthony Lingle ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Centimark Corporation
12 Grandview Circle
Canonsburg, PA 15317

Centimark Corporation c/o
CT Corporation System
330 N Brand Blvd, Suite 700
Glendale, CA 91203

Jeff Bushey
12 Grandview Circle
Canonsburg, PA 15317

Aaron Ellis
12 Grandview Circle
Canonsburg, PA 15317

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Centimark Corporation, Aaron Ellis, and Jeff Bushey ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to the following: all non-exempt employees who have or continue to work for Defendants in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745,



757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately November 1, 2019, to October 2021, as an hourly, non-exempt employee. Aggrieved Employees also worked for Defendants as non-exempt, hourly employees. Plaintiff and Aggrieved Employees performed work as laborers and roofers across California.

Defendants failed to pay Plaintiff and Aggrieved Employees for all hours spent driving for work purposes, including drive time from Defendants' Roseville location/shop, or the designated meet up location, to the job site. Plaintiff and Aggrieved Employees had to obtain materials and equipment necessary to complete their job tasks from Defendants' shop, or meet up location, and then transport these materials to various worksites across California.

When Defendants did pay Plaintiff and Aggrieved Employees for travel time at their hourly rate, they were rarely paid for the full number of hours they were on the road for work purposes. Additionally, Plaintiff and Aggrieved Employees earned remuneration in addition to their basic hourly rate, including, but not limited to, bonuses and zone pay. However, the additional compensation was not properly accounted for when calculating Plaintiff and Aggrieved Employees' regular rate of pay for overtime, sick leave, and meal and rest period premium purposes. This 'zone pay' was also consistently underpaid both because it was often less than the contracted 'zone pay' rate or amounted to less than Plaintiff and Aggrieved Employees' hourly rate for all hours worked.

Defendants, further, did not authorize and permit Plaintiff and Aggrieved Employees to take a full, uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. Defendants further did not authorize and permit Plaintiff and Aggrieved Employees a second meal break after working more than ten (10) hours, or a second or third rest period after working more than eight (8) and twelve (12) hours. In fact, it was Defendants' expectation that Plaintiff and Aggrieved Employees would remain on call during break time while driving to and from the work site and while at the actual job site.

Finally, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all expenses they incurred for work, including the use of their personal cellphones and tools required for work. For instance, Plaintiff and Aggrieved Employees used their personal phones to consistently communicate with staff and management while at the work site or driving. Despite this, Defendants failed to have any policy or practice to reimburse them for such use. In addition to using their personal phones for work purposes, Plaintiff and Aggrieved Employees



also used their own tools for job related purposes. Although Defendants did have company tools, these tools were often unavailable when they were needed for the job.

As a result of these practices, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements did not accurately itemize Plaintiff's and Aggrieved Employees' total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages.

At the time of Plaintiff's and Aggrieved Employees' termination and/or separation, Plaintiff and Aggrieved Employees had regular and overtime wages owing to them, meal and rest period premiums, and paid sick time. To date, Defendants have not paid Plaintiff and Aggrieved Employees these unpaid wages.

Aaron Ellis and Jeff Bushey were owners, directors, officers, and/or managing agents of Centimark Corporation, and caused each and every one of the aforementioned Labor Code violations.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved



Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count 3 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 16 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For



the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to adequately pay Plaintiff and Aggrieved Employees reimbursements for cell phone use, use of personal tools for work purposes, and meal expenses as required by law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants’ agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Aaron Ellis and Jeff Bushey were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.



Count 9 – Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

Labor Code section 221 states that “[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated above, Defendants failed to pay Plaintiff and Aggrieved Employees their contracted compensation for all hours worked. This was against the law.

Count 10 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees’ wage records and hours worked. This was against the law.

Count 11 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member. Any sick leave taken must be paid at the employee’s regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the



requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

JPR/jh

cc: Client via e-mail

1 *Lingle v. Centimark Corporation, et al.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On November 19, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9 Centimark Corporation 10 12 Grandview Circle 11 Canonsburg, PA 15317	Centimark Corporation c/o CT Corporation System 330 N Brand Blvd, Suite 700 Glendale, CA 91203
12 Jeff Bushey 13 12 Grandview Circle 14 Canonsburg, PA 15317	Aaron Ellis 12 Grandview Circle Canonsburg, PA 15317

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
22 personally delivered via the following overnight courier service: _____.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on November 19, 2021, at Elk Grove,
California.

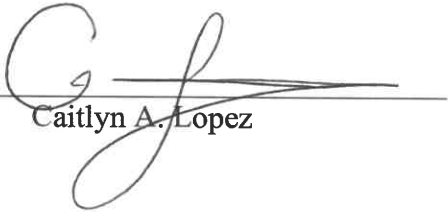
25
26 
27 Caitlyn A. Lopez
28

EXHIBIT D



Quotation Request:

Renald Konini
Shimoda & Rodriguez Law, PC
rkonini@shimodalaw.com
916.525.0716

Case Name:

Date:
RFP Number:

Lingle v. CentiMark Corporation

Monday, September 25, 2023
07160002

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Estimated Class Size:	265
Estimated Number of Aggrieved Employees	373
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	2	\$250.00
Data Analyst	Per Hour	\$150.00	2	\$300.00
*Data provided must be in a workable format. Apex can standardized provided data at an additional cost of \$150/hr.				
Sub Total:				\$550.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.75	265	\$463.75
USPS First Class Postage	Per Piece	\$0.66	265	\$174.90
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	53	\$106.00
Receive and Process Undeliverable Mail	Per Hour	\$75.00	0.5	\$37.50
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$43.82	1	\$43.82
Certified Language Translation: Spanish	Static Rate	\$1,200.00	1	\$1,200.00
Sub Total:				\$2,220.97

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$55.00	1	\$55.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$55.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	3	\$420.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	373	\$559.50
USPS First Class Postage	Per Piece	\$0.66	373	\$246.18
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	37	\$74.60
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	7	\$700.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Sub Total:				\$3,610.28

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	2	\$270.00
Project Management Reconciliation	Per Hour	\$100.00	2	\$200.00
Declarations	Per Hour	\$120.00	2	\$240.00
Sub Total:				\$710.00

WILL NOT EXCEED:				\$7,766.25
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Thank you for your business!

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Shimoda & Rodriguez Law, PC - Anthony Lingle

Date	Description	Amount
10/22/2021	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00
11/19/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
12/2/2021	Payment to Court - Complaint	\$435.00
12/2/2021	Service Fee to Court - Complaint	\$40.00
12/10/2021	One Legal Service Fee - Service of Complaint on Defendant	\$35.00
12/13/2021	Payment to Court - Complex Fees	\$1,000.00
12/13/2021	Service Fee to Court - Complex Fees	\$40.00
12/14/2021	Service Fee to Court - Proof of Service of Summons	\$40.00
1/14/2022	Service Fee to Court - Notice of Disassociation of Counsel	\$40.00
1/26/2022	Priority Mail - Discovery to opposing counsel	\$7.75
7/14/2022	One Legal Service Fee - Court filing fee \$20, filing fee \$79.35	\$99.35
7/26/2022	One Legal Service Fee - first Amended Complaint order 18599890	\$78.76
8/29/2022	Payment for Records -	\$4.90
10/13/2022	One Legal Service Fee - Case management statement 19004936	\$61.26
11/21/2022	Expenses - Westlaw search	\$219.00
5/17/2023	Mediation - Luis Marlin	\$9,000.00
	Total	\$11,676.02

EXHIBIT G

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
E-mail: attorney@shimodalaw.com
jrodriguez@shimodalaw.com
rkonini@shimodalaw.com

Attorneys for Plaintiff ANTHONY LINGLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

**DECLARATION OF ANTHONY LINGLE IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 26, 2024

Time: 10:00 a.m.

Courtroom: 3

Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021

FAC Filed: July 22, 2022

SAC Filed: October 7, 2022

Trial Date: None Set

1 I, Anthony Lingle, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Centimark Corporation ("Defendant") from approximately
6 November 1, 2019, to October 2021, as a non-exempt employee. I was subject to all of Defendant's
7 policies and practices that have been alleged as unlawful in the Complaint and the notices sent to the
8 Labor and Workforce Development Agency, including Defendant's failure to pay for all hours spent
9 driving for work purposes, failure to incorporate the value of nondiscretionary bonuses and zone pay
10 into the regular rate of pay for the purpose of calculating overtime wages, meal and rest period
11 premiums, and sick pay, failure to authorize and permit all meal and rest periods, failure to pay for all
12 hours worked due to its time keeping practices and policies, failure to reimburse class members for the
13 use of their cell phones for work purposes, failure to issue accurate wage statements, and the failure to
14 pay all outstanding wages due at the time of separation.

15 3. I have actively participated in the litigation of this case for the benefit of all Class
16 Members. Prior to obtaining an attorney, I researched the potential attorneys who I felt would be best
17 to help me bring these wage and hour claims against the company. I also researched the wage and hour
18 claims, so I had a better understanding of them when discussing them with my attorney, to make sure I
19 was able to provide all the right information for the claims to be properly evaluated, and ensure I
20 understood what to expect in litigation and how to help the case proceed. After securing Shimoda &
21 Rodriguez Law, PC, I continued to be actively involved in the case, seeking documents and potential
22 witnesses, to help ensure a positive outcome.

23 4. My attorneys explained to me the risks and benefits of bringing a class action and a
24 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
25 class and PAGA action meant that it would take substantially longer than pursuing my wage claims
26 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
27 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
28 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the wage

1 and hour claims as a class and PAGA action rather than pursuing them individually. As a Class
2 Representative, I also took on the risk of having to pay Defendant's costs if we were unsuccessful in
3 bringing our claims.

4 5. During the course of this litigation, I have given detailed accounts of all the facts related
5 to my employment. I provided my attorneys with extensive documentation that I believe supported the
6 claims brought against Defendant. I met with and assisted my attorneys in understanding these
7 documents and providing context for Defendant's payroll process as it applied to me and how I
8 believed it applied to Defendant's other employees. I worked in several different crews in both
9 northern and southern California, so I was able to discuss the similarities of the wage and hour policies
10 and practices among all Class Members.

11 6. The work I performed for this case included an extensive review of documents and
12 payroll practices to show and explain to my attorneys what was happening and why I thought it was
13 unlawful. For example, I provided several hundred pages of documents to my attorneys including
14 payroll records, employee handbooks, policies, text and phone records, and relevant correspondence
15 with Defendant. I spent a substantial amount of time obtaining documents and going over the facts
16 with my attorneys, providing context for the documents I produced. I reviewed the paystubs my
17 attorneys to help them identify all the different types of pay that existed and what the criteria was for
18 the amounts being paid. We also itemized and discussed every job site I worked at, the crew
19 composition for the site, supervisor and manager structure for the site, and working conditions for each
20 site so the wage and hour policies and practices forming the basis of the claims could be assessed
21 both on the merits and for purposes of class certification. The review became even more detailed when
22 my attorneys asked me questions about the payroll data sample that was produced in the informal
23 document and data exchange for mediation. I also spent a substantial amount of time identifying and
24 speaking to potential witnesses who could speak to my attorneys to give their own insights and provide
25 declarations. Overall, I have spent a substantial amount of time assisting in the prosecution of this case
26 over approximately the past two (2) years.

27 7. I participated in the negotiations and settlement discussions in this case, including
28 participating in mediation by phone, speaking with my attorneys to answer questions, provide any

1 additional information needed to assist the negotiations, and discussing the potential terms of the
2 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
3 when I needed clarification about various aspects of this case to make sure there were continually steps
4 taken to advance the interests of Class Members.

5 8. Although I have already spent a substantial amount of time on this case and assisting my
6 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
7 granted because Class Members will likely reach out to me about the Settlement and the process for
8 receiving payment.

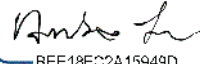
9 9. I have not received any benefits as a result of filing this wage and hour lawsuit. I have,
10 however, experienced substantial burdens as a result of filing the lawsuit that other Class Members
11 were not subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay
12 Defendant's costs if the Court or jury rules against us on the claims. My understanding is that this is a
13 substantial risk because the costs associated with litigation, in general, are very high and this cost is
14 multiplied many times over in complex litigation like class actions. I have spent a substantial amount
15 of time in this case, securing a monetary benefit for many individuals who have not had to do anything
16 whatsoever to have the opportunity to receive it. I have been employed full-time during the majority of
17 the time this case has been pending. As a result, the time I have spent on this case has to occur after
18 hours or on my days off. Rather than spend this time with friends and family, I have spent this time for
19 the benefit of Class Members. Finally, as part of the Settlement, I am providing a broader release
20 claims and waiving the protections of California Civil Code section 1542 for unknown claims. No
21 other Class Member is subject to such a broad release.

22 10. I have reviewed the Class and Representative Action Settlement Agreement and
23 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
24 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

25 11. I understand that any Class Representative Enhancement Award I may receive is for my
26 participation as a Class Representative and it is not contingent on my support or approval of the
27 Agreement.
28

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on November 20, 2023, in Sacramento, California.

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DocuSigned by:

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Anthony Lingle

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Attorneys for Plaintiff ANTHONY LINGLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 26, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021
FAC Filed: July 22, 2022
SAC Filed: October 7, 2022
Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Anthony Lingle (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Class and Representative Action Settlement Agreement and Release (“Agreement”)
7 in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Centimark Corporation, (“Defendant”) (Plaintiff and Defendant are sometimes
10 collectively referred to as the “Parties”) failed to pay overtime wages, failed to pay minimum wages,
11 failed to provide meal and rest periods or premiums in lieu thereof, failed to provide accurate wage
12 statements, failed to timely pay final wages, failed to pay all owed paid sick time, and engaged in unfair
13 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
14 (“PAGA”). These claims were based on allegations that Defendant failed to pay for all hours spent
15 driving for work purposes, failed to incorporate the value of nondiscretionary bonuses and zone pay
16 into the regular rate of pay for the purpose of calculating overtime wages and sick pay, failed to
17 authorize and permit all meal and rest periods due to worksite conditions and failed to pay the full value
18 of premiums due based on the same regular rate of pay issues affecting overtime premiums and paid
19 sick leave wages, failed to pay for all hours worked due to its time keeping practices and policies, and
20 failed to reimburse class members for the use of their cell phones for work purposes. The waiting time,
21 wage statement, unfair competition and PAGA claims also derive from these violations.

22 3. Plaintiff is the only named representative in this matter. From our initial investigations
23 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
24 class action. We filed the action on December 2, 2021, in Sacramento County Superior Court. The
25 Parties continued to litigate this matter and engage in discovery in the state proceedings until August
26 23, 2022, when Defendant removed the case to the United States District Court for the Eastern District
27 of California pursuant to the Class Action Fairness Act (“CAFA”). Plaintiff exhausted administrative
28 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the

1 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on November 19, 2021,
2 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the
3 LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant
4 via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no
5 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for
6 more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA.
7 After a substantial amount of meet and confer discussions with Defendant's counsel at the time about
8 the allegations and scope of the proposed First Amended Complaint, the Parties were able to stipulate
9 to allowing the amendment rather than proceeding via law and motion. A First Amended Complaint
10 was filed on July 22, 2022. After the case was removed to Federal Court in August 2022, Plaintiff and
11 Defendant engaged in further meet and confer discussions regarding the sufficiency of the allegations
12 and scope of the claims under federal pleading standards. After a substantial amount of discussions and
13 review of legal authority, Plaintiff filed a Second Amended Complaint on October 7, 2022, to address
14 many of the issues raised by Defendant. However, disputes remained and Defendant filed a motion for
15 partial dismissal and motion to strike, which the Court granted in part and denied in part. Prior to a
16 further amended pleading being filed, the Parties agreed to stay the litigation pending mediation and
17 mediate the claims within the Second Amended Complaint. The Parties were ultimately able to resolve
18 the claims at mediation. As such, the Second Amended Complaint remains the operative pleading. A
19 true and correct copy of Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy
20 of the Complaint was uploaded to the LWDA after we received the filed copy back from Court. I do
21 not believe I, nor anyone at my firm, have any conflicts with Class Members and that we may
22 adequately represent them.

23 4. After reaching a resolution on the essential terms at mediation on August 21, 2023, the
24 Parties continued to negotiate additional terms relevant to settlement administration and notice
25 procedures. There is currently no date set for a motion to certify the class and there is no trial date.

26 5. Defendant was initially represented by Gordon Rees Scully Mansukhani, LLP in this
27 matter. However, since August 2022, Defendant has been represented by Michael J. Nader and Paul
28 M. Smith of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. From the beginning, Defendant has

1 contested the merits of this case, the suitability of the case for class action or representative treatment,
2 the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for
3 each employee among other defenses and contentions they made challenging the propriety of this
4 action. For instance, Defendant contended that it correctly calculated Class Members' regular rates of
5 pay by incorporating the value of any non-discretionary wages (*e.g.*, bonuses, etc.) into its premium pay
6 and that zone pay represented payment for expense reimbursement related to travel, not wages, and
7 was, therefore, not something it was required to include in the regular rate under the law. Defendant
8 further contended that any failure to pay wages would not be deemed willful and/or be subject to a
9 good faith dispute and, therefore, would not support the imposition of waiting time penalties or a
10 finding that any wage statement violation was knowing and intentional. Defendant contended, even
11 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
12 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
13 attempts to comply with California Labor Code obligations by Defendant and the substantial number of
14 wage and hour policies demonstrating its good faith attempts to comply with the law. Notwithstanding
15 its agreement to settle this matter, Defendant believes the practices Plaintiff is contending are unlawful
16 either do not exist or, to the extent they do exist, fully comply with all state and federal employment
17 laws with respect to Plaintiff and Class Members. Also, Defendant has contended that this matter is not
18 appropriate for class certification outside of this proposed class settlement.

19 6. Based on the expected testimony from Plaintiff and Class Members, a review of
20 Defendant's policies and procedures and other documents relating to the alleged claims, information on
21 the number of Class Members, Class Members' dates of employment, and a representative sample of
22 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
23 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
24 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
25 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
26 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
27 potential class certification issues as well as the uncertainty of class certification, the difficulties of
28 complex litigation, and the lengthy process of establishing specific damages and various possible delays

1 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
2 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
3 proving those claims and that there was risk that a Court could find no willfulness in the failure to pay
4 wages at separation, which would eliminate the value of the waiting time penalty claim entirely.
5 Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to
6 proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the
7 case.

8 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
9 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
10 and potential damages for such claims. The parties engaged in formal and informal discovery and an
11 exchange of documents, including, but not limited to, Defendant's relevant policies for the entirety of
12 the statute of limitations applicable to the alleged claims, time records, and payroll data for a
13 representative sample of Class Members. Plaintiff's counsel also engaged in independent investigations
14 that included Class Member interviews and review of documents they provided directly. Although the
15 parties were ultimately able to resolve many of the disputes that arose during the litigation, there was a
16 substantial amount of meet and confer efforts that took place relating to the discovery in State Court and
17 the pleadings in Federal Court. I had several discussions with Defendant's counsel at the time regarding
18 a *Belaire* notice and document production for those who did not opt out of the production under the
19 *Belaire* procedure. Defendant's current counsel also provided substantial challenges to the merits of the
20 claims as pled, requiring an enormous amount of time and resources towards defending the claims.
21 Additionally, due to the existence of arbitration agreements for a large number of employees that would
22 have otherwise been within the scope of the putative class, there were unique challenges to the data and
23 damages analysis to ensure that extrapolation from the sample did not overcount potential violations for
24 the pool on individuals that would be within the scope of any settlement, which the Parties agreed would
25 only cover individuals who either did not sign an arbitration agreement or had elected to opt out of the
26 arbitration agreement. Defendant produced several hundred pages of documents for review and several
27 spreadsheets that comprised more than 104,000 rows of data that had to be cross referenced with each
28 other in order to appropriately and accurately analyze the information. The data and information

1 exchange covered all aspects of the asserted claims, including certification issues, merits issues,
2 damages, the scope and configuration of Class Members, the content and implementation of the wage
3 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
4 From this production we were able to determine information critical to a reliable damages analysis such
5 as the average hourly rate, average daily hours worked, average number of workweeks and pay periods
6 that had potential violations based on the asserted claims, the frequency with which violations occurred
7 in a given week and/or pay period, and the number of former employees. This information allowed my
8 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
9 all aspects of this litigation including providing factual information relating to Plaintiff's and Class
10 Members' employment conditions across California and under different types of crew configurations,
11 providing a substantial number of documents, and answering questions regarding Defendant's factual
12 contentions in this matter. This was important because it directly related to our ability to maintain this
13 case as a class action and our ability to obtain a favorable settlement for the class.

14 8. Throughout this litigation our office had numerous communications with Defendant's
15 Counsel discussing our respective positions. The parties engaged in mediation on August 21, 2023,
16 using an experienced mediator, Lou Marlin, Esq. It was only after nearly three (3) years of extensive,
17 arm's length negotiations and litigation that the parties were able to reach a settlement, which only
18 occurred after a full-day mediation and mediator's proposal. The negotiations were at all times
19 contentious and adversarial, though still professional in nature.

20 9. The parties reviewed and analyzed substantial amounts of data regarding the class
21 claims heading into mediation. Based on the data, there were approximately 241 Class Members and
22 339 PAGA Members within the respective claim periods. Class Members worked approximately
23 11,964 weeks during the Class Settlement Period and PAGA Members worked approximately 14,644
24 pay periods during the PAGA Settlement Period. The discrepancy between Class Member Workweeks
25 and PAGA Member pay periods is because Defendant paid employees on a weekly basis and there
26 were arbitration agreements that applied to a large number of employees. Thus, a higher than typical
27 number of pay periods were within the one (1) year statute of limitations to begin with and a large
28 number of individuals were excluded from being a Class Member that were still considered a PAGA

1 Member. There were approximately 165 Class Members who were former employees and 198 PAGA
2 Members who were former employees. The average hourly rate was approximately \$23.53. Based on
3 our analysis and review of all relevant documents and information, the following represents the
4 potential maximum recovery for each asserted claim and the risks associated therewith:

- 5 • Minimum Wages: Plaintiff based this claim on allegations that Defendant failed to pay
6 for off-the-clock work that included travel time to, from, and between job sites, time
7 checking in with supervisors on weekends to confirm their work schedule and locations,
8 and time spent working while clocked out for meal periods. Based on interviews with
9 Plaintiff and other Class Members, payroll data identifying the frequency with which
10 employees traveled to non-local job sites compared to the frequency of travel pay
11 appearing in those same pay periods, and the average distances travelled from the
12 starting location to the site location, Plaintiff contends that Class Members worked an
13 average of 3.05 hours off-the-clock per week when working at multiple job sites in a
14 given week as opposed to long term, single job site assignments. Based on the average
15 minimum wage rate over the course of the claim period (\$13.00 per hour), this equates
16 to approximately \$474,372 in unpaid minimum wages. Because Plaintiff assumed that
17 this time would also be unpaid overtime hours based on Class Members working an
18 average of 8.86 hours per day, only liquidated damages are being claimed to avoid
19 double recovery. See Cal. Lab. Code § 1194.2. This claim was heavily disputed in that
20 Defendant had a written policy thoroughly detailing that travel time from locations
21 where Class Members were required to first report to would be paid and that they did
22 regularly pay for such travel time. Defendant contended that to the extent there was
23 other travel being performed, it was not to and/or from locations Class Members were
24 required to be at and, instead, represented employees engaging in rideshares for their
25 own benefit. While we disputed this and contended that Class Members were appearing
26 at locations for travel at the direction of their supervisors, there was a substantial risk
27 that the Court may accept Defendant's argument. The unpaid travel time constituted the
28 vast majority of the total unpaid time per week, so this would have a substantial impact

on the value of the claim. An additional risk for the travel aspect of this claim was that it generally only affected the periods where Class Members worked at different job sites each day. Based on our investigations, the summer months typically allowed for long term, single job site assignments. Working different job sites each day was more commonly associated with the winter months. Thus, it is very unlikely that the 3.05 unpaid hours worked would be experienced by every employee every week. Regarding the unpaid hours resulting from hours worked while clocked out during meal periods, it did not appear from the sample time records that there was any rounding of meal periods specifically as opposed to rounding of time in general. To the extent that the time records showed a meal period of less than thirty minutes that did not already have a meal period premium paid for that day, the occurrence was added to our meal period violation calculations. With respect to any unpaid time between the difference of actual vs. rounded time, there was only a nominal difference of approximately 40 seconds per shift that was unpaid. This time is incorporated into the 3.05 average unpaid hours per week. This introduced risk for certifying this theory of liability in that proving unpaid hours worked during time clocked out for meal periods would now depend on testimony establishing a practice of foremen clocking people out for meal periods rather than a systematic and automatic payroll practice. This was also disputed by Defendant. Based on the foregoing, I believe it is likely that there would be a good faith dispute defense to any liquidated damages for unpaid minimum wages, resulting in the more likely value of this claim being \$0.00.

- Overtime (Off-The-Clock & Rounding): Plaintiff's overtime claims are, in large part, based on the same allegations forming the basis of the minimum wage claims. Based on the average overtime rate of \$35.30 per hour, the total damages for this claim based on the off-the-clock travel time and time spent working while clocked out for meal periods is \$1,287,921.61. As noted above, it is unlikely that the full 3.05 unpaid hours would be worked every week by every employee given the differences between long term single assignment job sites and jobs working at different sites each day. Because the difference

1 in assignments generally corresponded with the winter and summer months, I believe
2 the unpaid hours worked per week would likely be reduced to between 1.53 and 2 hours
3 per week. This would result in a more likely range of \$646,072.15 to \$844,538.76 for
4 the value of this claim assuming Plaintiff was successful in proving the claim on the
5 merits.

- 6 • Overtime (Regular Rate of Pay): Plaintiff alleged that Defendant paid non-discretionary
7 remuneration in the form of bonuses and “zone pay” in addition to Class Members’
8 basic hourly rate. Only approximately 14% of all pay periods had bonus and/or zone
9 pay as well as overtime payments. The average amount of unpaid wages after factoring
10 in the bonuses and/or zone pay, was approximately \$5.00 per occurrence, which equated
11 to a total of approximately \$8,374.80 in unpaid overtime. This theory of liability had
12 substantial risk associated with it. Defendant contended that it did pay the required
13 additional overtime premiums when bonuses were paid. To the extent that a particular
14 paystub appeared to show an underpayment, the additional premium factored in hours
15 from all pay periods where work on a particular project was performed, not just those on
16 the paystub the additional premium appeared on. Additionally, Defendant contended
17 that zone pay was actually a form of reimbursement, which is not required to be factored
18 into the regular rate of pay. Plaintiff contended that zone pay was paid to employees
19 whether expenses were incurred or not, distinguishing it from any type of
20 reimbursement payment and transforming it into a wage payment. Because the amount
21 of total damages under this theory of liability was relatively small, the real impact of
22 these arguments and the risks associated with the claim was that they could form the
23 basis for a good faith dispute defense for waiting time penalties.
- 24 • Meal and Rest Periods: These claims were based on allegations that Defendant failed to
25 authorize and permit lawful meal and rest periods due to requiring employees to return
26 to work before being able to take a full thirty (30) minute meal period, and being subject
27 to work conditions that required employees to remain on site and on duty during meal
28 periods. Based on the data, there were approximately 21,826 shifts where the time

1 records showed either a late lunch, a lunch period shorter than thirty (30) minutes, no
2 lunch period when employees worked more than six (6) hours, or no second lunch when
3 employees worked more than twelve (12) hours. The payroll records also showed
4 approximately 5,803 meal period premiums being paid. Based on the average rate of
5 pay, this resulted in approximately \$377,034.37 in unpaid meal period premiums. Based
6 on our investigations and interviews with Class Members, it was estimated that Class
7 Members were unable to take an average of approximately four (4) rest breaks per week,
8 resulting in approximately \$1,126,051.68 in unpaid rest period premiums. There was
9 substantial risk associated with these claims notwithstanding the time records showing
10 violations. With the exception of not paying premiums at the regular rate, Defendant's
11 meal and rest period policy was facially valid. Additionally, Defendant produced
12 records regarding its time keeping system showing that it prompted employees to
13 disclose whether or not they were able to take all their meal and rest periods during that
14 day. Plaintiff disputed whether the specific language used by the program in prompting
15 employees to mark whether or not they received their breaks would be deemed sufficient
16 to overcome the presumption of meal period violations as described in *Donohue v. AMN*
17 *Services, LLC*, 11 Cal.5th 58, 77 (2021). However, if the prompting language were
18 deemed sufficient to overcome the presumption, this would create a large risk for
19 Plaintiff being able to obtain certification on this theory of liability for the meal and rest
20 period claims. This also would have greater impact on the value of the rest period
21 claims in that they cannot rely on any presumption of violations based on time records
22 like the meal period claims can. Based on these risks, I believe a more reasonable range
23 of recovery for the meal period claims under this theory of liability is between
24 approximately \$131,962.03 to \$282,775.78. I believe the more reasonable range of
25 recovery for the rest period claims under this theory of liability is between
26 approximately \$112,000 and \$281,512.92.

- 27 • Meal and Rest Periods (Regular Rate of Pay): This claim is based on allegations that
28 Defendant did not incorporate the value of all premium pay when calculating Class

Members' regular rates of pay for the purpose of paying meal and rest period premiums. Approximately ten percent (10%) of pay periods had bonuses and/or zone pay paid in the same period where meal period premiums were paid. The meal and rest period premiums were always paid at the base rate of pay rather than the regular rate of pay. However, the amount owed for the class as a whole was relatively small at \$2,991. To the extent that zone pay was determined to be a reimbursement rather than a wage required to be incorporated into the regular rate of pay, the amounts owed would be substantially reduced as it was more often zone pay being paid in the same period as meal and/or rest period premiums than bonus payments.

- Paid Sick Time: This claim is based on allegations that Defendant did not incorporate the value of all bonuses and zone pay when calculating Class Members' regular rates of pay for the purpose of paying sick leave wages. Based on the data, there were approximately 704 instances where sick leave wages were paid in a period where a bonus was earned and/or zone pay was earned. This amounts to approximately \$7,040 in unpaid sick leave wages. It was more often the case that zone pay, rather than a bonus, was earned in the same period that sick leave wages were paid, introducing the same risk on the merits for this claim as outlined above.
- Failure to Pay Reimbursement: This claim is based on Plaintiff's allegations that he was required to use his personal cell phone to communicate with his supervisors, managers, and the office staff in order to address working conditions and/or issues arising on the worksite. Based on the data, interviews with Class Members regarding the average percentage of use of their personal cell phone (50%), and a review of typical costs associated with single line cell phone plans per month (\$83), the total unreimbursed expenses for cell phone use for all Class Members was approximately \$114,578.31. Defendant heavily disputed this claim, contending that foremen were provided with a cell phone and other electronic devices that could be used for all the necessary communication with any office staff, supervisors, and/or managers. Furthermore, Defendant contended that any use of personal cell phones by Class Members to check

1 their work schedules were not reimbursable expenses under the law. The potential of
2 alternative devices created a substantial risk for these claims. To the extent that the
3 Court agreed that reasonable alternatives existed, and, therefore, use of personal devices
4 were unnecessary, it could eliminate this claim entirely. Based on these risks, a more
5 reasonable range of recovery for this claim is approximately \$0-\$57,289.16.

- 6 • Wage Statement: This claim is derivative of the minimum wage, overtime, meal, rest,
7 and paid sick time claims. It is based on allegations that the wage statements issued to
8 Class Members included inaccurate hours worked, rates of pay, and meal and rest period
9 premiums owed due to Defendant's failure to pay all hours worked and calculate Class
10 Members' regular rates of pay. At the time of mediation, the maximum possible
11 damages for this claim based on Defendant's records was \$324,200. This amount does
12 not take into account any potential risks with respect to Plaintiff proving the merits or
13 damages. As this claim is derivative, it is subject to all the same risks of proving the
14 claims outlined above. However, there is also a substantial risk that a trier of fact or the
15 Court would find to the extent wage statements were inaccurate, it was not due to a
16 knowing and intentional failure of Defendant as required by Labor Code section
17 226(e)(1). Moreover, there is a split of authority regarding whether an employer's good
18 faith belief it is not violating the law precludes a finding of a knowing and intentional
19 violations. Prior to *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021),
20 appellate authority held that meal and rest period premiums need only be paid at the
21 basic rate of pay, so it is possible that the Court could find that Defendant had a good
22 faith belief it was not violating the law by itemizing the premium payments at the basic
23 rate of pay. Based on the risks outlined above, a more realistic range of recovery for this
24 claim is approximately \$15,000 to \$162,100.

- 25 • Waiting Time: This claim is derivative of the minimum wage, overtime, meal, rest, and
26 paid sick time claims. It is based on allegations that Class Members had wages due and
27 owing to them that remained unpaid after the end of their employment due to
28 Defendant's failure to pay for all hours worked and correctly calculate Class Members'

regular rates of pay. Because this claim is derivative, it carries the same risks identified for all claims above. The potential damages for this claim based on the number of former employees and the average daily rate of pay is \$1,241,608.50. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages outlined above. Plaintiff's failure to prevail on any of the above claims would reduce the number of former Class Members with unpaid wages who would be eligible to recover waiting time penalties. Further, there is a substantial risk that Defendant's would be able to establish a good faith dispute for the majority of the unpaid wage claims would cause a trier of fact to find the failure to pay wages was not willful or that Defendant had a good faith dispute affirmative defense, which would eliminate the value of this claim entirely. See Labor Code § 203 (a good faith dispute that any wages are due will preclude imposition of waiting time penalties); *Estrada v. Royal Carpet Mills, Inc.*, 76 Cal.App.5th 685, 729 (2022) ("A good faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact, which if successful, would preclude any recovery on the party of the employee.") (internal citations omitted); *Kao v. Joy Holiday*, 12 Cal. App. 5th 947, 963 (2017) (a good faith dispute as to whether an employee is exempt will preclude an award of waiting time penalties). It was not conclusively established until May 2022 that unpaid meal and rest period premiums constituted wages for purposes of waiting time penalty claims. See *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022). This would undermine Plaintiff's strongest basis for waiting time penalties at least up to May 2022. A more realistic range of recovery for this claim is approximately \$0 to \$620,804.25.

- PAGA: This claim is derivative of the Labor Code violations identified above. Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. Based on the data, the claims asserted, and the specified and/or

1 default civil penalty associated with each of the claims, the total exposure for the PAGA
2 claim is \$9,001,001.31. This amount does not take into account any of the potential
3 risks associated with each theory of liability, assumes a violation in every pay period for
4 every employee for every claim. Because this claim is derivative, it carries all the same
5 risks identified in the claims above, including the existence of low violation rates for
6 several of the claims. Applying the same level of risk reduction to the PAGA claims
7 that was applied to the substantive claims outlined above (54% to 79%)¹ would make a
8 more realistic range of potential recovery for PAGA penalties between \$1,890,210.28
9 (79% reduction) and \$4,140,460.60 (54% reduction). However, this does not account
10 for potential discretionary reductions in civil penalties by the Court as authorized under
11 the PAGA statutes. I believe the Court may exercise its discretion to reduce PAGA
12 penalties in this case because the underlying amount of alleged unpaid wages for a
13 majority of the claims are relatively small, a majority of the civil penalties sought would
14 be in addition to amounts owed for substantive violations, Defendant maintained a
15 substantial amount of detailed wage and hour policies demonstrating its attempt to
16 comply with the law, and Defendant contends it had a good faith belief it was following
17 the law, which a Court may find resulted in a good faith dispute that Class Members are
18 owed any unpaid wages or associated penalties. Courts are statutorily authorized to use
19 discretion to reduce penalties and the range of discretion used varies substantially. See
20 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
21 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal.
22 2011) (82% reduction). Thus, the realistic range of exposure for the PAGA claims may
23 be further reduced to between approximately \$340,237.85 (82% reduction off the lower
24 end of the range) and \$2,898,322.42 (30% reduction off the higher end of the range). It
25 is important to note that this discretionary reduction is completely separate from any
26

27 ¹ The maximum potential class damages based on the data was \$5,910,327.48. As the more realistic range of recovery for
28 these claims was between \$1,260,236.00 and \$2,747,993.70, this represents a risk reduction range of approximately 79%
(\$1,260,236.00 / \$5,910,327.48 = 21% of the total, which represents a reduction of 79%) to 54% (\$2,747,993.70 /
\$5,910,327.48 = 46% of the total, which represents a reduction of 54%).

1 risks on the merits. Given the substantial risks, and the disputed nature of the claims, we
2 believe the amount that might ultimately be awarded under this claim would be
3 significantly lower than our maximum exposure calculation. I believe allocating
4 \$140,000 to settling the PAGA claims in this case is appropriate, especially in light of
5 amounts that Courts have approved as reasonable valuations in other cases. *See*
6 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
7 the resolution of PAGA claims based on their being disputed and being part of a class
8 settlement which was evaluated based on the terms of the agreement overall); *Davis v.*
9 *Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017)
10 (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v.*
11 *Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving
12 \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
13 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation
14 in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900,
15 *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement);
16 *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
17 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food*
18 *Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment
19 from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
20 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the
21 LWDA out of \$6.9 million common-fund settlement).

22 10. To summarize, the maximum potential damages for the asserted class claims is
23 approximately \$5,910,327.48, which is inclusive of interest on amounts for alleged unpaid wages.
24 Accounting for the risks facing the claims, a more realistic range of potential damages for the class
25 claims is between \$1,260,236.00 to \$2,747,993.70. Taking into account the value of the PAGA claim,
26 the risks facing those claims on the merits, and the range of potential discretionary reductions by the
27 Court, a more realistic range of potential damages for all claims is between \$1,600,473.85 and
28 \$5,646,316.13. Plaintiff's \$600,000 gross recovery under the Agreement represents approximately 4%

1 of the maximum potential class and PAGA damages and 10.63% to 37.49% of the more realistic range
2 of recovery in this matter. After deducting from the Gross Settlement Amount the proposed allocations
3 for attorneys' fees (\$200,000.00) and costs (\$15,000), any Class Representative Enhancement Award
4 (\$10,000), Settlement Administrator Costs (\$15,000), and the LWDA PAGA Payment (\$105,000), the
5 net recovery under the Agreement, \$255,000, represents approximately 5% to 16% of the more realistic
6 range of recovery in this matter for all claims. I believe the Agreement represents a reasonable
7 compromise of claims based on the legal and factual disputes in this case. The average net award for
8 Class Members is approximately \$912.86 (\$220,000 Net Settlement Amount/241 Class Members). The
9 ability to secure a guaranteed settlement now and ensure Class Members receive some compensation,
10 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
11 reaching this Agreement.

12 11. I am not aware of any other cases that will be affected by the settlement in this case. I
13 am not aware of any other individual cases brought by Class Members against Defendant for the issues
14 alleged in this lawsuit. This indicates that the preferred method of resolving claims by Class Members
15 is through class action litigation, rather than individual litigation.

16 12. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
17 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
18 settlement or judgment should we recover a monetary amount. We took a risk that we would not
19 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
20 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
21 make sure employees are able to find affordable representation in order to ensure that employers are
22 complying with all their legal obligations towards employees and paying employees all their hard-
23 earned wages.

24 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
25 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
26 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
27 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
28 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the

1 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
2 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
3 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
4 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
5 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
6 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
7 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
8 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
9 and an officer for the Latino Law Students Association from 2009 to 2010.

10 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
11 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
12 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
13 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
14 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
15 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
16 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
17 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
18 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
19 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
20 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
21 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
22 Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
23 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
24 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
25 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
26 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
27 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
28

1 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
2 litigating, other than the instant case, includes, but is not limited to, the following:

- 3 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 4 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 5 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 6 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 7 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
8 (San Joaquin Sup. Ct.);
- 9 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 10 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 11 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
12 Sup. Ct.);
- 13 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
14 Ct.);
- 15 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 16 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
17 00271174 (Sac. Sup. Ct.);
- 18 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
19 Ct.);
- 20 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
21 Ct.);
- 22 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
23 Sup. Ct.);
- 24 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 25 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
26 Ct.);
- 27 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 28 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-

00209613 (Sac. Sup. Ct.);

- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snvir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

15. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the

1 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
2 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
3 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
4 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
5 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
6 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
7 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
8 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
9 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
10 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
11 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
12 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
13 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
14 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
15 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
16 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
17 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
18 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
19 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
20 as a Super Lawyer from 2014 to present.

21 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
22 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
23 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
24 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
25 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
26 Federal Courts, including up to certification, settlement, preliminary and final approval, and
27 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
28

1 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
2 include the following:

- 3 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 4 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 5 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 6 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 7 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 8 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 9 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 10 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 11 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
12 Sup. Ct.);
- 13 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 14 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
15 Ct.);
- 16 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
17 Ct.);
- 18 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
19 Sup. Ct.);
- 20 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 21 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
22 Ct.);
- 23 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 24 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
25 00209613 (Sac. Sup. Ct.);
- 26 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 27 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 28 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)

- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);

- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

18. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating settlements and disputes with defendants' counsel, drafting correspondence to defendants' counsel regarding the damages calculated per plaintiffs' claims against defendant companies, and more.

1 Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely
2 *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v.*
3 *Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v.*
4 *Vander Schaaf Dairy*, et al., Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins*
5 *v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources,*
6 *Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
7 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
8 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
9 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
10 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
11 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
12 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
13 Sup. Ct), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
14 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr.
15 Konini's practice largely revolves around wage and hour matters, including PAGA claims.

16 20. My office will be requesting attorneys' fees pursuant to the common fund doctrine
17 pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston &*
18 *Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478
19 (1980). Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of
20 the class and equity counsels that the cost of the representation should be born equally amongst all class
21 members receiving these benefits. The settlement recovery provides a good result in light of the risks
22 and is the product of substantial time and effort in analyzing the facts and law applicable to this case.
23 There was substantial risk in agreeing to take this case on a contingency basis and as a class action with
24 the possibility that my office would not receive any compensation for their time and efforts due to
25 issues regarding the merits and/or certification and have carried that risk over the course of the case. In
26 this case, I will be requesting fees in the amount of one third (1/3) of the common fund, which I
27 anticipate will result in a negative multiplier. I have reviewed our firm's billing records for this matter
28 and, to date, Mr. Shimoda, Mr. Konini, and I have collectively billed approximately 433.5 total hours

1 for a total combined lodestar of \$239,597.50. The lodestar is based on billing rates that have been
2 approved by the Sacramento County Superior Court in November 2022 and January 2023 in the matters
3 of *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049, and *Kee, et al. v. Dr.*
4 *Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case
5 No. 34-2020-00290072, respectively. Awarding fees at the hourly rate in effect at the time of the fee
6 request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S.
7 274, 283 (1989). Thus, the amount allocated for a potential attorney's fee award is reasonable given
8 the numerous hours my office spent on this case and the result obtained for Class Members. A true and
9 correct copy of my firm's itemized costs incurred to date is being filed with this motion as Exhibit E. I
10 do not expect them to exceed the allocated \$15,000 amount under the Agreement.

11 21. Plaintiff will submit a motion for final approval and a motion for attorneys' fees and
12 costs providing additional information to enable a lodestar cross check of the requested fee, a detailed
13 declaration from Plaintiff regarding his time spent on the case as well as any risks and burdens incurred
14 as the Class Representative to support any enhancement payment, an updated itemized costs
15 spreadsheet, and a declaration from the Settlement Administrator detailing the work performed and
16 Settlement Administrator Costs incurred.

17 22. I have used several class action administrator companies in the wage and hour class
18 actions I have resolved in the past and believe Apex Class Action, LLC, is best suited to administer the
19 proposed class settlement in this case. I obtained quotes from Apex Class Action, LLC, ILYM Group,
20 Inc., Phoenix, and CPT Group for settlement administration services. Apex Class Action, LLC,
21 provided the lowest quote. I have also verified that Apex Class Action, LLC, is able to provide the
22 services required for this case and has strict protocols in place to protect Class Members' information.
23 Apex Class Action, LLC, has provided a quote for the estimated maximum cost of administering the
24 class settlement equal to \$7,766.25. A true and correct copy of a cost estimate provided by Apex Class
25 Action, LLC, is filed with this Motion as Exhibit D. Any difference between the actual, lesser costs and
26 the maximum \$15,000 allocated towards Settlement Administrator Costs, will be paid to Participating
27 Class Members on a pro rata basis.
28

23. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit G.

24. A true and correct copy of the proposed Notice of Class Action Settlement is being filed with this Motion as Exhibit F.

25. The designated *cy pres* beneficiary in this case is Salvation Army Sacramento Metro. Only those funds that remain from uncashed settlement checks will be sent to the *cy pres* beneficiary. This entity was selected as a compromise between the initial proposals of the Parties. I believe it is a reasonable compromise in that the chosen entity helps a similar class of individuals as Class Members with regard to their employment in general. More specifically, this entity maintains programs that assist individuals obtain gainful employment, including a workforce development program for individuals seeking to learn construction trades and assisting with unemployment services. As Defendant employs individuals within the construction industry, roofing specifically, I believe this designated entity is sufficiently tied towards helping individuals similar to Class Members.

26. I have spoken with every other attorney at my firm to determine whether they have any relationship with the proposed *cy pres* beneficiary. Neither my firm, myself, nor any other attorneys employed at my firm have ever received any compensation, direct or indirect, for designating Salvation Army Sacramento Metro as *cy pres* a beneficiary or otherwise. Neither I nor anyone at my firm have ever performed any work, volunteer or otherwise, for Salvation Army Sacramento Metro.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 22, 2023, in Sacramento, California.

/s/ Justin P. Rodriguez

Justin P. Rodriguez

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Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiff ANTHONY LINGLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LINGLE, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 26, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021
FAC Filed: July 22, 2022
SAC Filed: October 7, 2022
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on January 26, 2024, at 10:00 a.m., in Courtroom 3,
4 15th Floor, before the Honorable Kimberly J. Mueller, presiding. Plaintiff Anthony Lingle
5 (“Plaintiff”) filed this putative class action in Sacramento County Superior Court on December 2,
6 2021, which was removed to the United States District Court for the Eastern District of California on
7 August 23, 2022. The operative Complaint alleges that Defendant Centimark Corporation
8 (“Defendant”) failed to pay overtime, failed to pay minimum wages, failed to provide meal periods or
9 meal period premiums in lieu thereof, failed to provide rest periods or premiums in lieu thereof, failed
10 to provide accurate wage statements, failed to timely pay final wages, failed to reimburse employees
11 for all reasonably incurred business expenses, and engaged in unfair competition. Plaintiff also
12 alleged that Defendant is liable for civil penalties under the Private Attorneys General Act (“PAGA”)
13 based on these violations. Plaintiff sought attorneys’ fees and costs as part of this Action. Defendant
14 denied all of Plaintiff’s claims and denied that this case was appropriate for class treatment. No class
15 has been certified.

16 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
17 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
18 as set forth in the Class and Representative Action Settlement Agreement and Release (“Agreement”
19 or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth in the
20 Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary Approval
21 of Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed
22 Notice of Class Action Settlement, and other evidence, HEREBY ORDERS AND MAKES
23 DETERMINATIONS AS FOLLOWS:

24 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
25 **CLASS REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

26 The Court finds that certification of the following class for settlement purposes only is
27 appropriate under Rule 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure and related case law:
28

1 All non-exempt employees, excluding any individuals employed solely as
2 office or administrative staff, who have or continue to work for Defendant
3 in California, and who have not signed, or opted out of, an arbitration
4 agreement, during the Class Settlement Period

5 The Court recognizes that the foregoing definition is for Class Member identification purposes
6 only and is not intended to capture the claims at issue or limit or alter the released claims under the
7 Agreement. The Court finds that Class Members meet the ascertainability and numerosity requirements
8 since the parties can identify with a matter of certainty, based on payroll records, approximately 241
9 individuals that fall within the definition of Class Members. The number of Class Members involved in
10 this case would make joinder impractical. The commonality and predominance requirements are met for
11 settlement purposes since there are questions of law and fact common to Class Members. The common
12 questions of law or fact in this case all stem from Plaintiff's contentions that Defendant caused the
13 violations outlined above by failing to pay for all hours spent driving for work purposes, failing to
14 incorporate the value of nondiscretionary bonuses and zone pay into the regular rate of pay for the
15 purpose of calculating overtime wages, meal and rest period premiums, and sick pay, failing to authorize
16 and permit all meal and rest periods, failing to pay for all hours worked due to its time keeping practices
17 and policies, failing to reimburse class members for the use of their cell phones for work purposes,
18 failing to issue accurate wage statements, and the failing to pay all outstanding wages due at the time of
19 separation. Additionally, Plaintiff alleged the existence of scheduling and payroll practices, employer
20 policies, and working conditions that he contended caused Plaintiff and similarly situated employees to
21 miss all meal and rest periods to which they were legally entitled. The PAGA, waiting time penalty,
22 wage statement violation, and unfair competition claims also derive from these violations. Additionally,
23 Class Members seek the same remedies under state law. The typicality requirement for settlement
24 purposes is also satisfied since the claims of the Class Representative is based on the same facts and
25 legal theories as those applicable to the class members.

26 The Court also finds that preliminarily and conditionally certifying the settlement class is
27 required to avoid each Class Member from litigating similar claims individually. This Settlement will
28 achieve economies of scale for Class Members with relatively small individual claims and conserve the
resources of the judicial system.

1 The Court finds that Plaintiff Anthony Lingle and Plaintiff's counsel, Galen T. Shimoda
2 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
3 representatives of the settlement class. The Court appoints them as Class Representative and Class
4 Counsel, respectively.

5 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

6 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
7 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
8 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
9 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
10 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
11 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
12 of continued litigation. The Court also acknowledges that Class Members may present any objections to
13 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
14 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
15 therein as if stated here in full, including the \$600,000 Gross Settlement Amount.

16 The Court approves of Apex Class Action, LLC, acting as the Settlement Administrator in this
17 case and hereby appoints them to fulfill those duties as outlined in the Agreement.

18 The Court approves of the \$140,000 PAGA Payment, which shall be paid from the Gross
19 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
20 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
21 Development Agency ("LWDA") (the LWDA PAGA Payment) and Twenty-Five percent (25%) of the
22 PAGA Payment will be paid to PAGA Members (the Individual PAGA Payment) on a pro rata basis as
23 described in the Agreement. The Court also finds that, under the facts and circumstances of this case,
24 the Agreement provides a recovery that creates an effective, substantial deterrent to any potential future
25 non-compliance, furthering the purpose of the Labor Code and LWDA.

26 The Court approves of the identified *cy pres* beneficiary and distribution plan wherein any
27 checks issued to Participating Class Members and/or PAGA Members that are not cashed by the
28 deadline to do so shall be donated to Salvation Army Sacramento Metro. *See In re Microsoft I-V Cases*,

1 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant
2 for any reason.

3 The releases and waivers for Class Members who do not opt out of being bound by the
4 Agreement (*i.e.*, Participating Class Members), PAGA Members, and the Class Representative are also
5 approved by the Court as set forth in the Agreement.

6 At this stage of preliminary approval, the Court does not make any determination on the specific
7 amount of attorney's fees and costs, Settlement Administrator Costs, or Class Representative
8 Enhancement Award that may ultimately be awarded in connection with the Court's review at final
9 approval. However, the Court finds that the common fund doctrine may be appropriate in this case
10 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that
11 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
12 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
13 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
14 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271
15 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a
16 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee
17 from the fund as a whole."). The amounts allocated under the Agreement for attorney's fees and costs,
18 for a Class Representative Enhancement Award, and Settlement Administrator Costs shall be included in
19 the Notice of Class Action Settlement to enable Class Members to review and comment thereon. The
20 Court will consider the reaction of Class Members when evaluating the reasonableness of the requested
21 amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal.
22 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further
23 supports finding the fee request reasonable"). Plaintiff and Class Counsel are directed to provide
24 information in connection with the motion for final approval that will enable the Court to assess the
25 appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested fee
26 percentage, and to quantify the amount of time spent by Plaintiff on this case and any further risks
27 and/or burdens incurred as a result of acting as a Class Representative. Class Counsel is also directed to
28 provide an updated declaration and itemization regarding actual litigation costs incurred. The

1 Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
2 incurred. The Court will review these amounts and allocations in connection with the final approval
3 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
4 for attorney's fees and costs, for a Class Representative Enhancement Award, and/or Settlement
5 Administrator Costs, the difference between the amounts awarded and the amounts requested shall be
6 added to the Net Settlement Amount for distribution to Participating Class Members pro rata as set forth
7 in the Agreement. Plaintiff shall file the motion for attorneys' fees and costs, Class Representative
8 Enhancement Award, and Settlement Administrator Costs no later than fifteen (15) calendar days before
9 the end of the class notice period. The motion shall be heard on the same day as the final fairness
10 hearing.

11 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
12 **INCLUDING THE NOTICE OF SETTLEMENT**

13 The Court finds that the proposed Notice of Class Action Settlement, which was submitted with
14 Plaintiff's Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the
15 Agreement, the rights being waived, their right to opt out, the ability to dispute the number of
16 workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to
17 participate in the settlement, how to file documentation in opposition to the proposed settlement, and
18 when to appear at the fairness hearing to be conducted on the date set forth below. The Court further
19 finds that the Notice of Class Action Settlement and proposed distribution of such notice by sending
20 copies of the Notice of Class Action Settlement by first class mail to each identified Class Member at his
21 or her most recent address based on a National Change of Address database search from the Class
22 Members' last known address and a skip trace on any Class Members who have the Notice of Class
23 Action Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
24 requirements, including those of due process. The Court finds that the notification procedures set forth
25 in the Agreement provide the best notice practicable under the circumstances of this case.

26 The Court also finds that because there is a strong interest in providing Class Members the
27 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
28 privacy rights, the sharing of employment information, including social security numbers, is not a

serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide Class Data, as defined in the Agreement, to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Defendant provides the Class Information to the Administrator	21 calendar days after the Court grants Preliminary Approval
Settlement Administrator to mail Notice of Class Action Settlement	14 calendar days after receipt of the Class Information
Settlement Administrator to re-mail Notice of Class Action Settlement	5 calendar days after receipt of notice that the Notice of Class Action Settlement was undeliverable.
Plaintiff to file Motion for attorney's fees and costs, Class Representative Enhancement Award, and Settlement Administrator Costs	No later than 15 calendar days before the Response Deadline to the Notice of Class Action Settlement
Response Deadline to the Notice of Class Action Settlement	45 calendar days after mailing
New Response Deadline to the Notice of Class Action Settlement for those receiving re-mailed Notices of the Class Action Settlement	The original Response Deadline or 10 calendar days from the date of remailing, whichever is later.
Settlement Administrator to provide counsel for the Parties a complete list of all Class Members who timely submitted a Request for Exclusion and a Declaration regarding the statistics and responses of settlement administration to date	14 calendar days after the Response Deadline

1 **FINAL APPROVAL AND HEARING**

2 The Court hereby grants Plaintiff's Motion and sets final approval hearing on
3 _____[at least 173 calendar days after preliminary approval], at 10:00 a.m., with briefs and
4 supporting documentation to be submitted according to the Federal Rules of Civil Procedure, in this
5 Courtroom. Participating Class Members who object in a timely manner as set forth in the Agreement,
6 may appear and present such objections at the fairness hearing in person or by counsel.

7 If for any reason the Court does not grant final approval of the Agreement, all evidence and
8 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
9 parties to the litigation, including all challenges to class certification for any purpose other than
10 approving a settlement class. The parties will revert to their respective positions as if no settlement had
11 been reached at all.

12 **IT IS SO ORDERED.**

13
14 Date: _____

By: _____
Honorable Kimberly J. Mueller

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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7 Attorneys for Plaintiff ANTHONY LINGLE

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 ANTHONY LINGLE, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.
15

16 CENTIMARK CORPORATION, a
Pennsylvania Corporation; and DOES 1 to
17 100, inclusive,

18 Defendant.
19
20
21
22

Case No. 2:22-CV-01471-KJM-JDP

CLASS ACTION

PROOF OF SERVICE

Date: January 26, 2024
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Kimberly J. Mueller

Filed: December 2, 2021
FAC Filed: July 22, 2022
SAC Filed: October 7, 2022
Trial Date: None Set

3 **PROOF OF SERVICE — F.R.C.P., Rule 5**

4 I, Elias Tapia, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to the
6 within above-entitled action.

7 On November 22, 2023, I served the following documents on the party below:

- 8 • PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
9 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 10 • MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF’S
11 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
12 SETTLEMENT
- 13 • EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF’S MOTION FOR
14 PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 15 • DECLARATION OF ANTHONY LINGLE IN SUPPORT OF PLAINTIFF’S MOTION
16 FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 17 • DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF’S
18 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
19 SETTLEMENT
- 20 • [PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY
21 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

22 Michael J. Nader (SBN 200425) 23 Paul M. Smith (SBN 306644) 24 Danielle Ocs (SBN 178677) 25 OGLETREE DEAKINS NASH SMOAK & 26 STEWART, P.C., 27 500 Capitol Mall, Suite 2500 28 Sacramento, CA 95814 Telephone: (916) 840-3150 Facsimile: (916) 840-3159 Email: paul.smith@ogletree.com Michael.Nader@ogletreedekins.com maria.davis@ogletreedekins.com noreen.witt@ogletreedekins.com	
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23 [] [By Mail] I am familiar with my employer’s practice for the collection and
24 processing of correspondence for mailing with the United States Postal
25 Service and that each day’s mail is deposited with the United States Postal
26 Service that same day in the ordinary course of business. On the date set forth
27 above, I served the aforementioned document(s) on the parties in said action
28 by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

1 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

2 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
3 above. No error was reported by the e-mail service that I used.

4 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
5 personally delivered via the following overnight courier service: UPS.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct, and that this declaration was executed on November 22, 2023, at Elk Grove,
California.

8 
9 _____
Elias Tapia