

**FILED**

AUG 28 2018

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY ck  
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9 CENTIMARK CORPORATION

10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

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12 TIMBER RIDGE HOMEOWNERS )  
13 ASSOCIATION, )  
14 )  
15 Plaintiff and )  
16 Counter-Defendant, )  
17 vs. )  
18 CENTIMARK CORPORATION, )  
19 )  
20 Defendant and )  
21 Counter-Claimant. )

CASE NO. 2:16-cv-02858-JAM-AC

~~PROPOSED~~ ORDER ON PLAINTIFF  
TIMBER RIDGE HOMEOWNERS  
ASSOCIATION'S MOTION FOR  
SUMMARY ADJUDICATION AND ON  
DEFENDANT CENTIMARK  
CORPORATION'S MOTION FOR  
SUMMARY ADJUDICATION

22 On July 31, 2018, at 1:30 p.m. the Honorable John. A Mendez, United States District  
23 Judge of the Eastern District of California, heard oral argument on the pending cross-motions for  
24 summary adjudication filed by Plaintiff Timber Ridge Homeowners Association ("Plaintiff") and  
25 CentiMark Corporation ("Defendant"). Daniel L. Rottinghaus and Seema Kadaba from Berding  
26 & Weil, LLP appeared for the Plaintiff. Kathy M. Rhoads and Nicholas D. Karkazis from  
27 Gordon Rees Scully Mansukhani, LLP appeared for the Defendant. After hearing, the Honorable  
28 John A. Mendez finds:

- (1) The parties agree that Defendant is not a joint tortfeasor in this case;
- (2) The contract documents identified in Article 5 of the contract constitute one,

1 integrated contract;

2 (3) The contract between the Plaintiff and Defendant was not a take-it-or-leave-it  
3 contract;

4 (4) The Plaintiff and Defendant were not in an unequal bargaining position;

5 (5) The contract excludes special, incidental, and consequential damages from the  
6 Plaintiff's potential recovery;

7 (6) The Plaintiff's remedies and the Defendant's liability is limited to the Defendant's  
8 repair of the roof and the value of the Defendant's services performed under this contract,  
9 including the warranty, cannot exceed the original cost of the roofing services to Plaintiff.  
10

11 The Court declines to make a ruling and will require further briefing at a later date  
12 regarding:

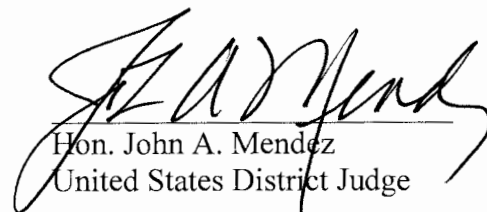
13 (1) Whether the Plaintiff may proceed at trial on negligence and strict liability claims;  
14 (2) What damage is excluded under the consequential damage limitations;  
15 (3) Whether Article 32 of the contract is a first party indemnity provision or a third-  
16 party indemnity provision.  
17

18 As a result of the foregoing, the Court hereby orders as follows:

19 (1) Plaintiff's motion for summary adjudication is denied in its entirety;  
20 (2) Defendant's motion for summary adjudication is granted on the issues set forth in  
21 this Order.  
22

23 **IT IS SO ORDERED.**

24 Dated: August 28, 2018

25   
26 Hon. John A. Mendez  
27 United States District Judge  
28