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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **(SAN FRANCISCO DIVISION)**

14 PATRICK HANSEN,
15
16 Plaintiff,
17
18 vs.
19 CENTIMARK COPORATION,
20
21 Defendant.

Case No. C-08-2611-SI

**DEFENDANT CENTIMARK
CORPORATION'S MOTION FOR ORDER
AMENDING THE COURT'S ORDER
STAYING PROCEEDINGS**

22 **CENTIMARK'S MOTION FOR ORDER AMENDING THE COURT'S**
23 **ORDER STAYING PROCEEDINGS**

24 On October 28, 2008, the Court issued an Order To Stay Proceedings. The
25 Order provided that counsel for CentiMark shall have seven business days from the
26 removal of the stay to refile a motion to dismiss this action. By the terms of the
27 Order, the stay of this action was automatically removed upon the resolution of Mr.
28 Hansen's motion to dismiss filed in the companion action then pending in the
United States District Court for the Western District of Pennsylvania. That motion
was resolved and the case was transferred to the Northern District of Illinois on
December 23, 2008, where it is currently proceeding (hereafter, the "Illinois

1 Action”).

2 CentiMark is aware that the deadline in the Court’s October 28 Order for re-
3 filing a motion to dismiss has passed. CentiMark respectfully requests that the
4 Court amend its October 28 Order to allow CentiMark to file its motion to dismiss
5 or, in the alternative, stay or transfer this action, which motion CentiMark submits
6 herewith. CentiMark believes that good cause exists for this motion, and the relief
7 requested would be in the interests of justice and would not prejudice any party, for
8 the reasons herein.

9 CentiMark recently hired new counsel, which counsel did not get the file in
10 this matter until the third week of January, after the deadline to re-file the motion
11 to dismiss had passed. (*See* Declaration of Anthony G. Hopp (“Hopp Decl.”), filed
12 concurrently herewith, ¶ 2.) Around the same time, CentiMark engaged in
13 discussions with counsel for Mr. Hansen in connection with the Illinois Action and
14 the possibility of Mr. Hansen voluntarily dismissing his Complaint in this action in
15 favor of litigating all claims in one court. (*Id.*, ¶¶ 3-4.) Although Mr. Hansen has
16 apparently decided to not voluntarily dismiss this action, counsel for CentiMark
17 felt it was important to explore the possibility before seeking to file a motion for
18 dismissal.

19 CentiMark further submits that good cause exists for the Court to amend its
20 October 28 Order to allow consideration of CentiMark’s motion to dismiss this
21 action for the reasons in the motion itself. For the sake of brevity, CentiMark will
22 not reproduce here all of the arguments in the motion to dismiss. But, and as is
23 explained more thoroughly in the motion itself, the circumstances favor
24 consideration of the motion because the possibility of a just and expeditious
25 resolution of these claims would serve the important policy of comity, which is
26 likely one reason the Court issued its October 28, 2008, Order staying these
27 proceedings pending developments in the parallel proceeding. As also explained
28

1 fully in the motion to dismiss, CentiMark believes a dismissal would serve to
 2 conserve judicial resources and prevent the possibility of conflicting judgments.

3 Finally, it seems clear that Mr. Hansen would not be at all prejudiced by
 4 consideration of CentiMark's motion to dismiss. Despite being filed by Mr.
 5 Hansen on April 23, 2008, this action has not progressed beyond the initial
 6 pleading stage. And despite his request for injunctive relief in the Amended
 7 Complaint, Mr. Hansen has still not moved for any such relief on any expedited
 8 basis. And there has been no discovery to date.

9 In the event the Court decides to not consider CentiMark's motion to dismiss
 10 this action, CentiMark requests that the Court consider the motion to the extent,
 11 and on the basis that, it requests the alternate relief of a stay or transfer of this
 12 action.

13 WHEREFORE, CentiMark respectfully requests that this Court amend its
 14 October 28, 2008, Order staying these proceedings, such that CentiMark may file
 15 its motion to dismiss this action.

16 **DATED:** February 24, 2009.

17 Respectfully submitted,

18 WILDMAN, HARROLD, ALLEN &
 19 DIXON LLP

20 By: /s/ Clinton J. McCord

21 Clinton J. McCord

22 Attorneys for Defendant

23 CENTIMARK CORPORATION

24 Centimark motion to
 25 dismiss may be filed.
 26 SO ORDERED

