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20 Attorneys for Plaintiffs

21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

22 **IN AND FOR THE COUNTY OF SACRAMENTO**

23 PHILLIP MORGAN and BRYON  
24 UNRUH, individually and on behalf of  
25 all others similarly situated ,

26 Plaintiff,

27 v.

28 CORE-MARK INTERNATIONAL,  
INC., a Delaware Corporation, and  
DOES 1 through 100, inclusive ,

Defendants.

Case No. 34-2018-00228207-CU-OE-GDS

**CLASS ACTION**

**UNOPPOSED**

**RESERVATION #: 2505046**

**DECLARATION OF DAVID MARA, ESQ. IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: July 23, 2020

Time: 2:00 p.m.

Dept: 53

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative  
3 class in this matter. I am duly admitted to practice before all the courts of the state of  
4 California. The following facts are within my personal knowledge and, if called to testify, I  
5 could and would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code  
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and  
9 cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”).
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court,  
11 Case No. GIC834348, which was the underlying case in the California Supreme Court’s  
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in  
13 which the California Supreme Court delineated the scope of employer obligations to provide,  
14 and employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California (“CAOC”) in the  
16 recent decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.*  
17 (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest  
18 breaks is not considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the  
20 California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and  
21 wage and hour class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff’s counsel in a host of other class actions involving violations of  
24 California’s wage and hour laws, many of which involve the transportation industry. For  
25 example, I have been and am involved as counsel for plaintiffs in the following sampling of  
26 class action cases involving wage and hour violations under California law: *Davis v. Apria*  
27 *Healthcare Group* (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.*  
28 (Case No. RG1577005); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*

1 *Ramirez v. US Foods, Inc.* (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*  
2 (Case No. 15-cv-01567-L-JMA); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No.  
3 DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v.*  
4 *Central Cal Transportation, Inc.* (Case No. RG15770011); *Eure v. Dotson v. Asbury*  
5 *Environmental Services* (Case No. RG16842620); *Spikes v. Bear Trucking, Inc.* (Case No.  
6 16CECG02389); *Reynoso v. Benjamin's Transfer, Inc.* (Case No. FCS048845); *Montes v.*  
7 *Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL);  
8 *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla*  
9 *Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco*  
10 *Central California, Inc.* (Case No. 9000052).

11 9. Mara Law Firm, PC (formerly The Turley & Mara Law Firm, APLC) devotes a significant  
12 portion of its practice specifically to wage and hour class actions. A majority of the cases I  
13 handle are wage and hour class actions and actions filed pursuant to the Private Attorneys  
14 General Act of 2004 ("PAGA"). Ms. Serb and Mr. Roberts solely handle wage and hour class  
15 actions and PAGA actions. Mara Law Firm, PC, has been appointed class counsel in  
16 numerous federal and state class actions. Mara Law Firm, PC, and its lawyers have handled  
17 over three hundred and fifty (350) class action and PAGA lawsuits. Mara Law Firm, PC, and  
18 its lawyers have successfully settled over one hundred (100) cases over a period of  
19 approximately fifteen (15) years, resulting in the recovery of millions of dollars for class  
20 members.

21 10. Mara Law Firm, PC, is well versed in wage and hour class action law. Specifically, Mara Law  
22 Firm, PC, has obtained class certification and has been certified as class counsel in the  
23 following cases: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior  
24 Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; YRC*  
25 *Worldwide, Inc.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v.*  
26 *Sysco Corporation; Sysco Central California, Inc.* (Eastern District of California, Case No.  
27 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*  
28 (District of Nebraska, Case No. 8:15-cv-287); and *Thomas Perez v. City of San Diego* (San

1 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL).

2 11. In addition, Mara Law Firm, PC, filed and fully briefed class certification motions before the  
3 following cases were settled: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County  
4 Superior Court, Case No. 37-2014-00004724); *Rick Frieri v. Sysco Corporation; Sysco San*  
5 *Diego, Inc.* (Southern District of California, Case No. 16-cv-1432-JLS-NLS); *Alberto Solano*  
6 *and Damon Randall v. Professional Auto Transport, Inc.* (San Bernardino County Superior  
7 Court, Case No. CIVDS1619020); *Richard Terry v. Hoovestol, Inc.* (Northern District of  
8 California, Case No. 3:16-cv-05183-JST); and *Kristina McConville v. Renzenberger, Inc.*  
9 (Central District of California, Case No. 2:17-cv-02972-FMO-JC).

10 12. I have litigated over three hundred and fifty (350) class action and PAGA lawsuits. I have  
11 been litigating wage and hour class action lawsuits for approximately fifteen (15) years. I  
12 graduated from California Western School of Law and was admitted to practice law in  
13 California in May 2004. I primarily handle wage and hour class actions and PAGA actions. I  
14 am the president of Mara Law Firm, PC and was a partner of The Turley & Mara Law Firm,  
15 APLC. I supervise and oversee the class action department of the firm which consists of five  
16 (5) associate attorneys.

17 13. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior  
18 Court, Case No. GIC834348) which was the underlying case in the California Supreme  
19 Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th  
20 1004, in which the California Supreme Court delineated the scope of employer obligations to  
21 provide, and employee rights to receive, meal and rest periods under California law. I also  
22 wrote the Amicus Curiae brief on behalf of Consumer Attorneys of California ("CAOC") in  
23 the decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.*  
24 (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest  
25 breaks is not considered duty-free). I also wrote the Amicus Curiae brief on behalf of CAOC  
26 in the matter currently pending before the California Supreme Court, *Frlekin v. Apple, Inc.*  
27 (Cal. S. Ct. No. S243805).

28 14. I oversee all aspects of the class action and PAGA action cases Mara Law Firm, PC, handles.

1 I also write a wide range of motions and argue at a wide range of hearings. I review and edit  
2 motions written by the associates at Mara Law Firm, PC; develop strategies with associates at  
3 Mara Law Firm, PC, in how to best litigate each case; review and edit discovery that is sent  
4 out to employers; review and edit clients' discovery responses; draft and revise complaints;  
5 draft and revise retainers sent to clients; communicate with clients; communicate with class  
6 members; communicate with defense counsel; communicate with co-counsel; review  
7 documents produced by employers; conduct investigations into potential cases; research and  
8 stay up to date in relevant law; attend mediations; draft, review, and revise settlement  
9 agreements; and oversee all day to day matters in cases.

10 15. I have been named as class counsel in the following certified cases as a result of the court  
11 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*  
12 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*  
13 *Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-  
14 01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern  
15 District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner*  
16 *Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); and  
17 *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-  
18 00016621-CU-OE-CTL).

19 16. Jamie Serb is an associate at Mara Law Firm, PC. She solely handles wage and hour class  
20 actions and PAGA actions. Ms. Serb graduated from California Western School of Law and  
21 was admitted to practice law in California in June 2013 and received her undergraduate degree  
22 from University of California, San Diego in 2004. Ms. Serb has been litigating wage and hour  
23 class actions for over four (4) years and has handled over one hundred (100) class action and  
24 PAGA lawsuits. Ms. Serb received her training in wage and hour class action and PAGA  
25 lawsuits while at Mara Law Firm, PC. Ms. Serb has been at the Mara Law Firm, PC, for over  
26 five (5) years. She also co-wrote an amicus brief on behalf of CAOC in *Williams v. Superior*  
27 *Court* (2017) 3 Cal.5th 531.

28 17. Ms. Serb oversees all aspects of the cases assigned to her. Ms. Serb routinely writes and

opposes motions and argues at hearings. Ms. Serb edits motions written by other associates; drafts and revises discovery propounded on employers; communicates with clients; communicates with class members; communicates with co-counsel; communicates with defense counsel; drafts and revises notices to the Labor and Workforce Development Agency pursuant to the Private Attorneys General Act of 2004; creates exhibits for use in cases; reviews documents produced by employers; deposes employer witnesses; defends client depositions; attends mediations; drafts, reviews, and revises settlement agreements; drafts, reviews, and revises settlement approval motions; argues at hearings on settlement motions; and oversees all day to day work in her cases.

18. Ms. Serb has been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287) and *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL).

19. The proposed settlement is the product of serious, informed, non-collusive negotiations, has no obvious defects, does not improperly grant preferential treatment to the class representative or segments of the class and falls within the range of fair and reasonable settlements. I believe that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and adequate. Therefore, I recommend approval of the settlement.

20. A true and correct copy of the Stipulation of Class Action Settlement is attached hereto as **Exhibit A**, to which the proposed Class Notice is attached as **Exhibit 1** and the Information Sheet is attached as **Exhibit 2**.

21. Defendant provides fresh products to the convenience store industry. It has five divisions, two of which are unionized. Plaintiffs were formerly employed for Defendant in California as drivers, delivering products to convenience stores for Defendant. Plaintiff Morgan filed his class action lawsuit on March 1, 2018 and amended it on May 24, 2018. His complaint alleges claims for failure to provide meal and rest periods, failure to reimburse business expenses, wage statement violations, unfair competition and violations of the Private Attorneys General Act of 2004 ("PAGA"). Plaintiff Unruh filed his PAGA action on June 5, 2018 in Alameda

County, alleging PAGA penalties for meal, rest break, and recovery period violations, failure to pay wages, failure to pay all wages due at termination, failure to pay employees twice per month, and failure to reimburse business expenses. On February 26, 2020, Plaintiff Morgan amended his complaint, adding Plaintiff Unruh and his claims to the instant lawsuit.

22. Defendant denies the allegations in their entirety, denies any liability or wrongdoing of any kind associated with the claims alleged in this action, and further denies that, for any purposes other than settling this action, this matter is appropriate for class treatment. Defendant further contends that it has complied with all applicable California laws, the California Labor Code, the applicable Wage Order(s), PAGA, and the Unfair Competition Law. Defendant further contends that, if this matter were to be litigated further, it would have strong defenses to oppose class certification and succeed on the merits of Plaintiffs' causes of action.

23. Plaintiffs' analyzed information and documents concerning the class claims, such as Defendant's employee handbooks, including policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies, thousands of trip sheets, wage statements, termination wages, as well as information regarding the number of putative class members, the average number of hours worked, the wages rates in effect, and length of employment for the average putative class member. From this information, Plaintiffs were able to analyze Defendant's liability in this action and prepare a realistic damage model.

24. The gravamen of Plaintiffs' claims is that Defendant failed to provide control-free meal and rest breaks to Class Members in violation of *Labor Code* sections 512 and 226.7, Wage Orders, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Based upon the discovery and litigation conducted, Plaintiffs contend Defendant pressures Class Members to complete their deliveries within assigned delivery windows. Plaintiffs contend these delivery windows are unrealistic and fail to account for delays caused by weather, traffic, and the re-delivery of products missing from prior delivery day. As a result, Plaintiffs argue Defendant's policies require drivers to keep their cellphones with them at all times and be ready to answer calls from Defendant and customers regarding any delays throughout the day, regardless of whether or

1 not the drivers are on a meal or rest break. As a result, Plaintiffs argue drivers are not relieved  
2 of all employer-control during meal and rest breaks. Furthermore, Plaintiffs allege that  
3 Defendant has uniform policies which require employees to protect and safeguard against  
4 damage to the trucks and the theft of product at all times, or face discipline, up to and  
5 including termination. As a result, Plaintiffs contend drivers are never relieved of all duties for  
6 meal and rest breaks and Defendant owes 30-minutes of unpaid wages to Class Members per  
7 shift for meal breaks that were not duty free, as well as Labor Code §226.7 premiums for  
8 unprovided meal and rest breaks. Furthermore, Plaintiffs argue drivers are not provided  
9 second meal periods in qualifying shifts. Plaintiffs also argue that if they prevail on their  
10 unpaid wages theory of liability, they would also prevail on their derivative waiting time  
11 penalties and wage statement claims.

12 25. Defendant vehemently denies Plaintiffs' theories of liability for unpaid wages during meal  
13 breaks, and meal and rest break violations. Defendant contends that meal and rest breaks were  
14 provided in compliance with California law. Pursuant to *Brinker Restaurant Corp. v. Superior*  
15 *Court* (2012) 53 Cal.4th 1004, Defendant argues it need not ensure meal and rest breaks are  
16 taken but is only obligated to make them available to drivers. Defendant further contends its  
17 meal and rest break policies were facially lawful and Defendant did not have a policy which  
18 refused duty-free meal and rest breaks to drivers. Defendant argues its meal and rest break  
19 policies comported with the flexibility the *Brinker* court held was integral to California's meal  
20 and rest break requirements. Furthermore, Defendant argued Plaintiffs' theory of liability was  
21 impractical, as drivers were required to leave their vehicle in order to make deliveries and  
22 were, therefore, under no such duty to protect and safeguard the truck and product at all times.  
23 To that end, Defendant argued it had statements from Class Members confirming that they  
24 were able to leave their vehicle and product unattended to perform work duties, as well as take  
25 meal and rest breaks.

26 26. Defendant further argues it relieved Class Members of all duties for meal breaks, and that if  
27 Class Members chose to work through their meal breaks, it had no actual or constructive  
28 knowledge of any work being done, as Class Members marked they took their meal and rest



breaks on their trip-sheets that were turned in to Defendant each day. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586; *White v. Starbucks Corp.* (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (“[t]o prevail on his off-the-clock claim, [plaintiff] must prove that Starbucks had actual or constructive knowledge of his off-the-clock work.”). Therefore, it could not be held liable for these unpaid wages.

27. Additionally, Defendant contends it has affirmative preemption defenses to Plaintiffs’ claims for meal and rest break violations, pursuant to the December 21, 2018 decision published by the Federal Motor Carrier and Safety Administration (“FMCSA”), which purports to preempt California’s meal and rest break laws for motor carriers. The Parties disagreed as to whether or not this preemption determination, if valid, applied, and if so, disagreed that it applied retroactively. Defendant vigorously argued that the Court would follow FMCSA’s following opinion, published in March 2019, which declared the decision to be retroactive. Moreover, several trial courts have since concluded that the FMCSA’s decision bars all meal and rest break claims brought by drivers subject to the to the FMCSA’s hours of service rules. *See, e.g., Ayala v. U.S Xpress Enterprises, Inc.*, Case No. 5:16-cv-00137, Dkt. No. 242 (C.D. Cal. May 2, 2019); *In re Garda Wage and Hour Cases*, Case No. JCCP4828 (L.A. Sup. Ct. 2019). Thus, if Defendant’s arguments prevailed, Plaintiffs’ meal and rest break claims would be preempted.

28. The Parties agreed to attend mediation with respected mediator, Jeffrey Krivis. The mediation took place on March 27, 2019. After a full-day of mediation, the Parties were unable to reach a settlement. In the following months, and with the help of Mr. Krivis, the Parties continued their settlement negotiations. Through these efforts, the Parties eventually reached a resolution, the terms of which are set forth in the Settlement Agreement the Parties now request the Court to preliminarily approve.

29. Plaintiffs will provide a summary of actual litigation costs in support of final approval.

30. After all Court-approved deductions from the GSA, it is estimated that \$420,833.36 (“Net Settlement Amount” or “NSA”), less all applicable employee payroll taxes, will be distributed to Participating Class Members.

1 31. Both Plaintiffs' Counsel and Defendant's Counsel are particularly experienced in wage and  
2 hour employment law and class actions. Plaintiffs' Counsel have significant experience in  
3 litigating unpaid wages, unprovided meal and rest periods, misclassification, overtime, and  
4 expense reimbursement class actions. Plaintiffs' Counsel have prosecuted numerous wage and  
5 hour class action cases on behalf of employees for California *Labor Code* violations and thus  
6 are experienced and qualified to evaluate the class claims and to evaluate settlement versus  
7 trial on a fully informed basis, and to evaluate the viability of the defenses.

8 32. In addition to being able to discover the strengths and vulnerabilities associated with  
9 Plaintiffs' claims, prior to mediation, Defendant provided Plaintiffs with information and data  
10 to facilitate a damage exposure analysis. Based upon the data provided by Defendant,  
11 Plaintiffs determined that there are approximately 940 Class Members who worked  
12 approximately 198,796 shifts within the Class Period. The average hourly rate for Class  
13 Members is \$23.00 per hour.

14 33. Plaintiffs contend that Defendant's meal and rest period policies do not comply with  
15 California law because they are not duty-free. Plaintiffs allege that during meal and rest  
16 periods drivers must protect the company's property and answer calls from the company and  
17 customers. Based on these allegations, Class Members would be entitled to a maximum of  
18 two premiums under California Labor Code § 226.7 for each shift worked, one for unlawful  
19 meal periods and one for unlawful rest periods. Accordingly, Defendant's *maximum* exposure  
20 under Plaintiffs' meal and rest period claims is \$9,144,616. Defendant maintains it would win  
21 its argument that drivers were exempt from California's meal and rest break requirements  
22 under FMCSA, and that Plaintiffs meal and rest break claims would be entirely defeated.

23 34. Stemming from the meal period theory of liability, is Plaintiffs' theory of liability for unpaid  
24 wages for the unpaid time spent clocked out for a meal break, but not relieved of all employer  
25 control. Plaintiff alleged that, because drivers remain under Defendant's control during meal  
26 breaks – required to answer his/her cellphone when Defendant calls and guard/protect the  
27 truck/product from theft and damage - this time should be paid. Therefore, Plaintiffs assert  
28 that drivers are owed unpaid wages for the time spent clocked out for meal periods.

1 Defendant's *maximum* exposure under Plaintiffs' unpaid wages theory of liability is  
2 \$2,286,154. However, Defendant maintains that it had no actual or constructive knowledge of  
3 any work being done during unpaid meal periods, as drivers filled out their driver logs,  
4 indicating all meal and rest breaks were taken in accordance with California law.

5 35. Plaintiffs further contend they would be entitled to waiting time penalties if successful with  
6 their unpaid wages claim. Defendant's *maximum* exposure for waiting time penalties is  
7 \$3,525,900. However, Defendant argues that if Plaintiffs prevailed on their unpaid wages  
8 claims, to also prevail on waiting time penalties, Plaintiffs would have to prove it "willfully"  
9 failed to pay Plaintiffs and Class Members appropriate wages due upon separation of  
10 employment, which Defendant contends was not willful. Cal. Lab. Code § 203(a). Defendant  
11 further contends it would not be liable for waiting time penalties because a "good faith  
12 dispute" exists over the payment of past wages. *See* Cal. Code Regs. Tit. 8 § 13520.

13 36. Plaintiffs also contend Defendant required its driver employees to use their own personal  
14 cellphones to remain in contact with Defendant, its customers, as well as for navigation  
15 purposes. Thus, Plaintiffs assert Defendant owes drivers reimbursement of the business use of  
16 their personal cellphones. Plaintiffs evaluated Defendant's *maximum* exposure under this  
17 theory at \$657,000. Defendant argues this claim would also fail because Plaintiffs did not  
18 incur any unreimbursed necessary business expenses because it provided drivers with work  
19 phones and maps.

20 37. Plaintiffs contend that Defendant does not provide accurate, itemized wage statements, as  
21 time spent working through meal breaks is not included on the wage statement. The statute of  
22 limitations for this cause of action is only one (1) year. Plaintiffs calculate Defendant's  
23 *maximum* exposure under this cause of action as \$3,292,000. Defendant argues that this claim  
24 would also fail because Plaintiffs would be unable to succeed on an unpaid wages theory of  
25 liability.

26 38. In addition, PAGA allows the private enforcement of certain California Labor Code sections  
27 relating to wage and hour violations. PAGA Section 2699(f)(2) provides a penalty of \$100 per  
28 employee per pay period for an initial violation and \$200 for each subsequent violation.

1 However, California courts have interpreted this language to require notice to the employer  
2 that an initial violation occurred before penalties for subsequent violations could be assessed.  
3 *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Plaintiffs allege  
4 Defendant has four violations - unlawful meal and rest breaks, failure to pay all wages, and  
5 unreimbursed business expenses – of Labor Code sections which give rise to PAGA penalties.  
6 Defendant argues that Plaintiffs would not be able to stack violations for each alleged Labor  
7 Code violation and would only be entitled to one penalty for all violations per pay period –  
8 assuming Plaintiffs prevailed on the merits of the underlying Labor Code violations. The  
9 statute of limitations for PAGA penalties goes back one year. Based upon the data provided to  
10 Plaintiffs, Plaintiffs estimate Defendant employed approximately 300 employees within the  
11 statutory period and who would be eligible to receive PAGA penalties. Plaintiffs estimate  
12 Defendant’s *maximum* exposure under PAGA is \$1,620,000 – assuming Defendant is correct  
13 that it would not be possible to stack PAGA penalties in light of the *Amaral* decision.

14 39. Thus, not taking into account any of its defenses, Defendant’s total exposure if Plaintiffs were  
15 successful in their core non-PAGA claims would be approximately \$18,905,670. However,  
16 should the Court agree with Defendant’s arguments, Plaintiffs and the class would not be  
17 entitled to any meal and rest period premiums, wages, or reimbursed business expenses and  
18 any associated PAGA penalties would be extinguished, as penalties can only be awarded if the  
19 Court agrees with Plaintiffs’ underlying allegations. Thus, if the Court agreed with  
20 Defendant’s arguments, the potential exposure would be reduced to zero as Plaintiffs’ wage  
21 statement and waiting time penalties causes of action are derivative of Plaintiffs’ meal period,  
22 rest period, unpaid wages and unreimbursed business expenses causes of action.

23 40. In addition, Plaintiffs also had to consider that, should the Court agree with their theories and  
24 grant certification as to each of their claims, they may not be awarded the full exposure at  
25 trial. In light of Defendant’s defenses, supporting evidence, and position that the action is not  
26 suitable for class treatment, the settlement amount of \$725,000.00 is a reasonable and fair  
27 settlement amount.

28 41. Plaintiffs contend those standards are met here. Plaintiffs do not have any conflicts of interest

1 with the Class. They have been and continue to be committed to vigorously prosecuting this  
2 case.

3  
4 I hereby declare under penalty of perjury under the laws of the State of California that the  
5 foregoing is true and correct.

6  
7 Dated: June 30, 2020

8   
9 \_\_\_\_\_  
David Mara, Esq.

# **EXHIBIT A**

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Attorneys for Plaintiff PHILLIP MORGAN, individually  
and on behalf of all other similarly situated individuals

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO - MAIN COURTHOUSE

PHILLIP MORGAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

CORE-MARK INTERNATIONAL, INC., a  
Delaware Corporation, and DOES 1 through  
100, inclusive,

Defendants.

CASE NO.: 34-2018-00228207-CU-OE-GDS  
*[Unlimited Jurisdiction]*

*Assigned for all purposes to the  
Honorable Alan G. Perkins, Dept. 35*

**STIPULATION OF CLASS ACTION  
SETTLEMENT**

Complaint Filed: March 1, 2018  
Trial Date: None Set

1 IT IS HEREBY STIPULATED, by and between Plaintiffs PHILLIP MORGAN and  
2 BRYON UNRUH (collectively, "Plaintiffs"), on the one hand, and Defendant CORE-MARK  
3 INTERNATIONAL, INC. ("CORE-MARK" or "Defendant") (hereinafter both Plaintiffs and  
4 Defendant together shall be referred to as the "Parties"), on the other hand, and subject to the  
5 approval of the Court, that the Action, as defined below, is hereby compromised and settled  
6 pursuant to the terms and conditions set forth in this Stipulation and that the Court shall make  
7 and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and  
8 subject to the definitions, recitals, and terms set forth herein which by this reference become an  
9 integral part of this Stipulation.

10 **I. DEFINITIONS**

11 **A. Action.** The term "Action" means the following putative class and representative  
12 action: *PHILLIP MORGAN and BRYON UNRUH, individually and on behalf of all others*  
13 *similarly situated, v. CORE-MARK INTERNATIONAL, INC., a Delaware Corporation, and*  
14 *DOES 1 through 100*, Sacramento Superior Court Case No. 34-2018-00228207-CU-OE-GDS.

15 **B. Class Counsel.** The term "Class Counsel" means (a) Marlin & Saltzman, LLP,  
16 including Adam Tamburelli, Esq. and Stan Saltzman, Esq.; and (b) Mara Law Firm, including  
17 David Mara, Esq., Jamie Serb, Esq., and Tony Roberts, Esq.

18 **C. Class Counsel Award.** The term "Class Counsel Award" means reasonable  
19 attorneys' fees for Class Counsel's litigation and resolution of the Action (not to exceed 33 1/3%  
20 of the Maximum Settlement Amount), and Class Counsel's expenses and costs reasonably  
21 incurred in connection with the Action (not to exceed \$30,000.00).

22 **D. Class Information.** The term "Class Information" means information regarding  
23 Class Members that CORE-MARK shall in good faith compile from its records and shall be  
24 authorized by the Court to transmit in a secured manner to the Settlement Administrator. The  
25 Settlement Administrator shall agree in writing to maintain Class Information in a secure manner.  
26 Class Information shall be transmitted to the Settlement Administrator in electronic form and  
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1 shall include: each Class Member's full name, last known address, Social Security number, and  
2 Compensable Workweeks.

3 **E. Class Members.** The term "Class Members" shall mean all persons currently or  
4 formerly employed by Defendant as a driver, truck driver, driver helper, driver trainer, and/or  
5 hosteler, in the State of California during the Class Period. This definition expressly excludes  
6 any "Class Member" whose employment with Defendant terminated on or before May 31, 2016  
7 and who was included as a class member in the class action settlement in *Jonathan Upton and*  
8 *Keith Mills v. Core-Mark International, Inc.*, California Superior Court, County of San  
9 Francisco, case number CGC 15-549438.

10 **F. Class Notice.** The term "Class Notice" means the Notice of Proposed Class  
11 Action Settlement, substantially in the form attached hereto as **Exhibit 1**, which shall be subject  
12 to Court approval and which the Settlement Administrator shall mail to each Class Member, in  
13 English and Spanish, explaining the terms of this Stipulation and the Settlement.

14 **G. Class Period.** The term "Class Period" means the period from March 1, 2014  
15 through April 1, 2020.

16 **H. Class Representative Service Award.** The term "Class Representative Service  
17 Award" means the amount that the Court authorizes to be paid to Plaintiffs, in addition to  
18 Plaintiffs' Individual Settlement Payments, in recognition of Plaintiffs' efforts and risks in  
19 assisting with the prosecution of the Action.

20 **I. Compensable Workweeks.** The term "Compensable Workweeks" means the  
21 total number of workweeks worked by each Participating Class Member during the Class Period,  
22 as based upon CORE-MARK's employment records, less any workweeks in the Class Period for  
23 which a Participating Class Member received a settlement award or payment in connection with  
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the previous class action case of *Jonathan Upon and Keith Mills v. Core-Mark International, Inc.*, California Superior Court, County of San Francisco case number CGC 15-549438.

**J. Core-Mark.** The term “Core-Mark” means Defendant CORE-MARK INTERNATIONAL, INC.

**K. Court.** The term “Court” means the Superior Court of the State of California for the County of Sacramento.

**L. Defense Counsel.** The term “Defense Counsel” means Fisher & Phillips, LLP, including Lonnie D. Giamela, Esq. and Philip J. Azzara, Esq.

**M. Effective Date.** The term “Effective Date” means when the settlement is considered as “final.” For purposes of this Stipulation of Class Action Settlement, “Final” means (i) in the event that the Settlement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn then the date of entry of the final judgment in this Action by the Court; or, (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the Court’s order of final approval of the Settlement, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the court’s order of final approval has been filed, then the Settlement Agreement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court’s final approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such Appeal has been either dismissed or withdrawn by the appellant. Core-Mark will fund the settlement within 10 days of the Effective date.

**N. Employer’s Share of Payroll Taxes.** The term “Employer’s Share of Payroll Taxes” means Core-Mark’s portion of payroll taxes, including, but not limited to FICA and FUTA, on the portion (if any) of the Individual Settlement Payments that constitutes wages. Core-Mark shall be responsible for paying the Employer’s Share of Payroll Taxes to the Settlement Administrator. The Settlement Administrator will be responsible for calculating and remitting to the appropriate government agencies all employer and employee payroll tax

obligations arising from the Settlement and preparing and submitting filings required by law in connection with the payments required by the Settlement.

**O. Final Approval Hearing.** The term “Final Approval Hearing” means the hearing to be conducted by the Court after the filing by Plaintiffs of an appropriate motion and following appropriate notice to Class Members giving Class Members an opportunity to request exclusion from the Class and Settlement and to object to the Settlement, at which time Plaintiffs shall request that the Court finally approve the fairness, reasonableness and adequacy of the terms and conditions of the Settlement, enter the Final Order and Judgment, and take other appropriate action.

**P. Final Order and Judgment.** The term “Final Order and Judgment” means the order and judgment to be entered by the Court upon granting final approval of the Settlement and this Stipulation as binding upon the Parties and Participating Class Members.

**Q. Individual Settlement Payment.** The term “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Participating Class Member.

**R. Information Sheet.** The term “Information Sheet” means the form that shall be prepared by the Settlement Administrator and sent to each Class Member that sets forth the Compensable Workweeks and the estimated Individual Settlement Payment for the Class Member, substantially in the form attached hereto as **Exhibit 2**.

**S. LWDA.** The term “LWDA” means the California Labor and Workforce Development Agency.

**T. Maximum Settlement Amount.** The term “Maximum Settlement Amount” means the maximum amount (excluding the Employer’s Share of Payroll Taxes) Core-Mark shall have to pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all Individual Settlement Payments to Participating Class Members, the Class Counsel Award, the Settlement Administration Costs, litigation costs associated with Class Counsel’s prosecution of the Action, the Class Representative Service Awards, and the PAGA payments to Participating Class Members and the LWDA. Subject to Court approval and the

terms of this Stipulation, the Maximum Settlement Amount Core-Mark shall be required to pay is seven-hundred twenty-five thousand dollars and zero cents (\$725,000.00).

**U. Net Settlement Amount.** The term “Net Settlement Amount” means the Maximum Settlement Amount, less the Class Counsel Award, litigation costs associated with Class Counsel’s prosecution of the Action, the PAGA payment to the LWDA, the Settlement Administration Costs, and the Class Representative Service Awards.

**V. Notice Packet.** The term “Notice Packet” means the packet of documents which shall be mailed to all Class Members by the Settlement Administrator, including the Class Notice and the Information Sheet.

**W. PAGA.** The term “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq.

**X. Participating Class Members.** The term “Participating Class Members” means Plaintiffs and all other Class Members who do not submit a valid and timely Request for Exclusion.

**Y. Parties.** The term “Parties” means Plaintiffs and Core-Mark.

**Z. Plaintiffs.** The term “Plaintiffs” means the Plaintiffs in this action, Phillip Morgan and Bryon Unruh.

**AA. Preliminary Approval Order.** The term “Preliminary Approval Order” means the order to be issued by the Court approving and authorizing the mailing of the Notice Packet by the Settlement Administrator, setting the date of the Final Approval Hearing, and granting preliminary approval of the Settlement set forth in this Stipulation, among other things.

**BB. Released Claims.** The term “Released Claims” with respect to the Participating Class Members (other than Plaintiffs) means any and all claims, demands, rights, liabilities, and/or causes of action that were pleaded or could have been pleaded based upon the factual allegations set forth in the operative complaints filed in the Action and arising at any time during the Class Period, including claims for (1) Failure to Provide Meal Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (2) Failure to Provide Rest Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (3) Failure to Reimburse for Necessary Business

1 Expenses – Cal. Labor Code § 2802; (4) Failure to Provide Adequate Wage Statements – Cal.  
2 Labor Code §§ 226, 226.2 and 226.3; (5) Unfair Competition – Cal. Bus. and Prof. Code § 17200  
3 et seq.; and (6) Private Attorneys General Act – Cal. Labor Code § 2698 et seq.

4 “Released Claims,” with respect to Plaintiffs, means any and all claims, demands, rights,  
5 liabilities, and causes of action of every nature and description whatsoever, known or unknown,  
6 asserted or that might have been asserted, whether in tort, contract, or for violation of any state  
7 statute, rule or regulation, arising out of, relating to, or in connection with any act or omission by  
8 or on the part of any of the Released Parties committed or omitted prior to the Effective Date.  
9 The General Release includes any unknown claims Plaintiffs do not know or suspect to exist in  
10 Plaintiffs’ favor at the time of the release, which, if known by Plaintiffs, might have affected  
11 Plaintiffs’ settlement with, and release of, the Released Parties or might have affected Plaintiffs’  
12 decision not to object to this Settlement. Plaintiffs stipulate and agree that, upon the Effective  
13 Date, Plaintiffs shall be deemed to have, and by operation of the Final Approval Order and  
14 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law,  
15 the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other  
16 similar provision under federal or state law, which provides:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR  
18 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR  
19 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF  
20 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR  
21 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

22 Plaintiffs may hereafter discover facts in addition to or different from those Plaintiffs now  
23 know or believe to be true with respect to the subject matter of the Action and Released Claims,  
24 but Plaintiffs, upon the Effective Date, shall be deemed to have, and by operation of the Final  
25 Approval Order and Judgment shall have, fully, finally, and forever settled and released any and  
26 all Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-  
27 contingent, which now exist, or heretofore have existed upon any theory of law or equity now  
28 existing or coming into existence in the future.

1           **CC. Released Parties.** The term “Released Parties” means Defendant CORE-MARK  
2 INTERNATIONAL, INC., and includes its respective present or former parent companies,  
3 subsidiary companies and affiliates, and officers, directors, board members, insurers, employees,  
4 partners, shareholders, attorneys, agents, and any other successors, assigns, or legal  
5 representatives.

6           **DD. Request for Exclusion.** The term “Request for Exclusion” means the written  
7 request submitted by Class Members, requesting to be excluded from the Action and the  
8 Settlement.

9           **EE. Response Deadline.** The term “Response Deadline” means the date forty-five  
10 (45) days after the Settlement Administrator mails the Notice Packets to Class Members and the  
11 last date on which Class Members may submit a Request for Exclusion or objection to the  
12 Settlement.

13           **FF. Settlement.** The term “Settlement” means the final and complete disposition of  
14 the Action pursuant to this Stipulation.

15           **GG. Settlement Administration Costs.** The term “Settlement Administration Costs”  
16 means the reasonable costs and fees of administration of this Settlement to be paid to the  
17 Settlement Administrator from the Maximum Settlement Amount, including, but not limited to:  
18 (i) translating Notice Packets into Spanish; (ii) printing and mailing (and re-mailing, if necessary)  
19 of Notice Packets to Class Members; (iii) establishing and maintaining a website for the  
20 administration of the settlement; (iv) preparing and submitting to Participating Class Members  
21 and government entities all appropriate tax filings and forms; (v) computing the amount of and  
22 distributing Individual Settlement Payments, Class Representative Service Awards and Class  
23 Counsel Award; (vi) processing and validating Requests for Exclusion; (vii) establishing a  
24 Qualified Settlement Fund, as defined by the Internal Revenue Code; (viii) calculating and  
25 remitting to the appropriate government agencies all employer and employee payroll tax  
26 obligations arising from the Settlement and preparing and submitting filings required by law in  
27 connection with the payments required by the Settlement; and (ix) submitting sums from  
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1 uncashed settlement checks sent to Participating Class Members to the State of California for  
2 distribution to Participating Class Members as unclaimed property.

3 **HH. Settlement Administrator.** The term “Settlement Administrator” means CPT  
4 Group, Inc.

5 **II. RECITALS**

6 **A. Procedural History.** On March 1, 2018, Plaintiff Phillip Morgan (“Plaintiff  
7 Morgan”) filed a complaint in the Superior Court of the State of California, County of  
8 Sacramento, entitled, “*Phillip Morgan, individually and on behalf of all others similarly situated*  
9 *v. CORE-MARK INTERNATIONAL, INC., a Delaware Corporation; AND DOES 1 through*  
10 *100,*” Case No. 34-2018-00228207. The complaint asserted six causes of action for: (1) Failure  
11 to Provide Meal Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (2) Failure  
12 to Provide Rest Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (3) Failure  
13 to Reimburse for Necessary Business Expenses – Cal. Labor Code § 2802; (4) Failure to Provide  
14 Adequate Wage Statements – Cal. Labor Code §§ 226, 226.2 and 226.3; (5) Unfair Competition  
15 – Cal. Bus. and Prof. Code § 17200 et seq.; and (6) Private Attorneys General Act – Cal. Labor  
16 Code § 2698 et seq.

17 On May 24, 2018, Plaintiff Morgan filed a first amended complaint.

18 On June 5, 2018, Plaintiff Bryon Unruh (“Plaintiff Unruh”) filed a complaint in the  
19 Superior Court of the State of California, County of Alameda entitled, “*BRYON UNRUH, on*  
20 *behalf of himself, all others similarly situated, and on behalf of the general public v. CORE-*  
21 *MARK INTERNATIONAL, INC., and DOES 1 through 100, inclusive,*” Case No. RG18907545.  
22 The complaint asserted ten causes of action for: (1) Violation of the Private Attorney General  
23 Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed  
24 (California Labor Code § 2698, et seq.); (2) Violation of the PAGA for Failure to Pay all  
25 Overtime Wages (California Labor Code § 2698, et seq.); (3) Violation of the PAGA for Failure  
26 to Provide Meal Periods (California Labor Code § 2698, et seq.); (4) Violation of the PAGA for  
27 Failure to Provide Rest Periods (California Labor Code § 2698, et seq.); (5) Violation of the  
28 PAGA for Failure to Pay Wages Due at Termination (California Labor Code § 2698, et seq.); (6)

1 Violation of the PAGA for Failure to Provide Paid Sick Days (California Labor Code § 2698, et  
2 seq.); (7) Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized  
3 Employee Wage Statements (California Labor Code § 2698, et seq.); (8) Failure to Pay  
4 Employees Twice Per Month (California Labor Code § 2698, et seq.); (9) Violation of PAGA  
5 for Failure to Provide Recovery Periods (California Labor Code § 2698, et seq.); and (10)  
6 Violation of PAGA for Failure to Reimburse Expenses in Discharging Duties (California Labor  
7 Code § 2698, et seq.).

8 On March 27, 2019, the Parties participated in a full-day, private mediation with an  
9 experienced mediator, Jeffrey Krivis. After a full day of mediation, the Parties had not reached a  
10 settlement. In the following months, the Parties continued their efforts, through Mr. Krivis, to  
11 resolve the Action through arms-length negotiations. Through these efforts, the Parties  
12 eventually reached a resolution, as set forth in this stipulation of settlement.

13 On or about February 26, 2020, pursuant to a stipulation among the Parties, Plaintiff  
14 Morgan and Plaintiff Unruh filed and served a second amended complaint in the Action to  
15 consolidate their claims.

16 **B. Benefits of Settlement to Plaintiffs and the Class Members.** Plaintiffs and  
17 Class Counsel recognize the expense and length of continued proceedings necessary to litigate  
18 Plaintiffs' disputes in the Action through trial and through any possible appeals. Plaintiffs also  
19 have taken into account the uncertainty and risks of the outcome of further litigation, and the  
20 difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of  
21 the burdens of proof necessary to establish liability for the claims asserted in the Action, both  
22 generally and in response to Core-Mark's defenses thereto, and the difficulties in establishing  
23 damages, penalties, restitution and other relief sought in the Action. Plaintiffs and Class Counsel  
24 also have taken into account Core-Mark's agreement to enter into a settlement that confers  
25 substantial benefits upon the Class Members. Based upon the foregoing, Plaintiffs and Class  
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Counsel have determined that the Settlement set forth in this Stipulation is fair, adequate, and reasonable, and is in the best interests of all Class Members.

**C. Core-Mark's Reasons for Settlement.** Core-Mark has concluded that any further defense of the Action would be protracted and expensive for all Parties. Substantial amounts of Core-Mark's time, energy, and resources have been, and unless this Settlement is completed, shall continue to be, devoted to the defense of the claims asserted by Plaintiffs. Core-Mark also has taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Even though Core-Mark continues to contend that it is not liable for any of the claims alleged by Plaintiffs in the Action, Core-Mark has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Stipulation and to put to rest the claims alleged in the Action. Core-Mark has asserted and continues to assert that the claims alleged by Plaintiffs have no merit and do not give rise to any liability, damages, restitution, penalties or other payments. This Stipulation is a compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry out this Stipulation, shall be construed or used as an admission by or against Core-Mark as to the merits or lack thereof of the claims asserted in the Action. Core-Mark contends that it has complied with all applicable state, federal and local laws.

### **III. TERMS OF SETTLEMENT**

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

**A. Binding Settlement.** This Settlement shall bind the Parties, all Participating Class Members, Class Counsel and Defense Counsel, subject to the terms and conditions hereof and the Court's approval.

**B. Tax Liability.** The Parties make no representations as to the tax treatment or legal effect of the payments specified herein, and Class Members are not relying on any statement or representation by the Parties, Class Counsel or Defense Counsel in this regard. Participating Class Members and Class Counsel understand and agree that they shall be responsible for the payment of all taxes and penalties assessed on the payments to each of them specified herein,

1 and shall hold Core-Mark and Defense Counsel free and harmless from and against any claims  
2 resulting from treatment of such payments as non-taxable, including the treatment of such  
3 payments as not subject to withholding or deduction for payroll and employment taxes.

4 **C. Circular 230 Disclaimer.** The Parties acknowledge and agree that (1) no  
5 provision of this Stipulation, and no written communication or disclosure between or among the  
6 Parties, Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall  
7 any such communication or disclosure constitute or be construed or be relied upon as, tax advice  
8 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as  
9 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,  
10 independent legal and tax counsel for advice (including tax advice) in connection with this  
11 Stipulation, (b) has not entered into this Stipulation based upon the recommendation of any other  
12 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
13 communication or disclosure by any attorney or advisor to any other party to avoid any tax  
14 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any  
15 other party has imposed any limitation that protects the confidentiality of any such attorney's or  
16 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure  
17 by the acknowledging party of the tax treatment or tax structure of any transaction, including any  
18 transaction contemplated by this Stipulation.

19 **D. Preliminary Approval of Settlement.** By May 15, 2020, Plaintiffs intend to  
20 move the Court to enter the Preliminary Approval Order, thereby conditionally certifying the  
21 Class for settlement purposes only and setting a Final Approval Hearing date. The Parties agree  
22 to work diligently and cooperatively to present this Settlement to the Court for preliminary  
23 approval. The Preliminary Approval Order shall provide for, among other things, the Notice  
24 Packet to be sent to Class Members as specified herein. The Parties agree that the conditional  
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1 certification of the Class is for settlement purposes only and is in no way an admission by Core-  
2 Mark in the Action or in any other proceeding that class certification is proper.

3 **E. Release by Plaintiffs and Participating Class Members.** Upon the Effective  
4 Date, Plaintiffs and all other Participating Class Members shall be deemed to have released their  
5 respective Released Claims against the Released Parties.

6 **F. Settlement Administration.**

7 *1. Notice of Settlement to Class Members*

8 Within fifteen (15) days after entry of the Preliminary Approval Order, Core-Mark shall  
9 provide the Settlement Administrator with the Class Information for purposes of mailing the  
10 Notice Packets to Class Members.

11 Notice by First Class U.S. Mail: Upon receipt of the Class Information, the Settlement  
12 Administrator shall perform a search based on the National Change of Address Database  
13 maintained by the United States Postal Service to update and correct any known or identifiable  
14 address changes. Within fifteen (15) days after receiving the Class Information from Core-Mark  
15 as provided herein, the Settlement Administrator shall mail copies of the Notice Packet to all  
16 Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise  
17 its best judgment to determine the current mailing address for each Class Member. The address  
18 identified by the Settlement Administrator as the current mailing address shall be presumed to  
19 be the most current mailing address for each Class Member. The Parties agree that this procedure  
20 for notice provides the best practical notice to Class Members and fully complies with due  
21 process.

22 Undeliverable Notice Packets: Any Notice Packet returned to the Settlement  
23 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the  
24 forwarding address affixed thereto. If no forwarding address is provided, the Settlement  
25 Administrator shall promptly attempt to determine a correct address by the use of skip-tracing,  
26 or other type of automated search, using the name, address and/or Social Security number of the  
27 Class Member involved, and shall then perform a re-mailing to the Class Member whose Notice  
28 Packet was returned as non-delivered, assuming another mailing address is identified by the

1 Settlement Administrator. Class Members who are sent a re-mailed Notice Packet shall have  
2 their Response Deadline extended by fifteen (15) days from the date the Settlement Administrator  
3 re-mails the Notice Packet. If these procedures are followed, notice to Class Members shall be  
4 deemed to have been fully satisfied, and if the intended recipient of the Notice Packet does not  
5 receive the Notice Packet, the intended recipient shall nevertheless remain a Class Member and  
6 shall be bound by all terms of the Settlement and the Final Order and Judgment.

7 Determination of Individual Settlement Payments: The Settlement Administrator shall  
8 determine the eligibility for, and the amounts of, each Individual Settlement Payment under the  
9 terms of this Stipulation. The Settlement Administrator's determination of the eligibility for and  
10 amount of each Individual Settlement Payment shall be binding upon the Class Member and the  
11 Parties, yet subject to review by Class Counsel, Defense Counsel and the Court. Core-Mark's  
12 records shall be given the presumption of accuracy.

13 Disputes Regarding Administration of Settlement: Any dispute not resolved by the  
14 Settlement Administrator concerning the administration of the Settlement shall be resolved by  
15 the Court. Prior to any such involvement of the Court, counsel for the Parties shall confer in  
16 good faith to resolve the dispute without the necessity of involving the Court.

17 *1. Exclusions*

18 The Class Notice shall explain that Class Members who wish to exclude themselves from  
19 the Class and Settlement must submit a Request for Exclusion to the Settlement Administrator  
20 by the Response Deadline. The Request for Exclusion: (1) must contain the name, address, and  
21 telephone number of the person requesting exclusion; (2) must be signed by the Class Member;  
22 and (3) must be postmarked by the Response Deadline and returned to the Settlement  
23 Administrator at the specified address. Subject to review by Class Counsel, Defense Counsel  
24 and the Court, the date of the postmark on the return mailing envelope on the Request for  
25 Exclusion shall be the exclusive means used by the Settlement Administrator to determine  
26 whether a Class Member has timely requested exclusion from the Class and Settlement. Any  
27 Class Member who timely and properly requests to be excluded from the Class and Settlement  
28 shall not be entitled to any benefits under the Settlement and shall not be bound by the terms of

1 the Settlement, nor shall the Class Member have any right to object to the Settlement or appeal  
2 from the entry of the Final Order and Judgment. Class Members who do not submit a valid and  
3 timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of  
4 the Settlement and the Final Order and Judgment entered in this Action if the Settlement is finally  
5 approved by the Court. No later than ten (10) days after the Response Deadline, the Settlement  
6 Administrator shall provide counsel for the Parties with a complete list of all Class Members who  
7 submitted a timely and valid Request for Exclusion.

## 8                   2.       *Objections*

9           The Class Notice shall state that Class Members who wish to object to the Settlement  
10 should submit to the Settlement Administrator a written brief or statement of objection (“Notice  
11 of Objection”) by the Response Deadline. The Notice of Objection must (1) state the full name  
12 of the Class Member; (2) be signed by the Class Member; (3) state the grounds for the objection;  
13 and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator  
14 at the specified address. Subject to review by Class Counsel, Defense Counsel and the Court, the  
15 date of the postmark on the return mailing envelope on the Notice of Objection shall be used by  
16 the Settlement Administrator to determine whether a Class Member has timely objected to the  
17 Settlement. Class Members who fail to timely make objections in the manner specified herein  
18 may be deemed to have waived any objections. At no time shall any of the Parties, Class Counsel  
19 or Defense Counsel seek to solicit or otherwise encourage or discourage Class Members to file  
20 and serve a Notice of Objection or appeal from the Final Order and Judgment. No matter what,  
21 Class Members can be heard at the Final Approval Hearing regardless of whether or not they  
22 have complied with the objection procedures outlined above.

## 23                   3.       *Monitoring and Reviewing Settlement Administration*

24           The Parties have the right to monitor and review the administration of the Settlement to  
25 verify that the monies allocated under the Settlement are distributed in a correct amount, as  
26 provided for in this Stipulation.

## 27                   4.       *Best Efforts*

28           The Parties agree to use their best efforts to carry out the terms of this Settlement.

1           **G.     Funding and Allocation of Maximum Settlement Amount.**

2                   1.     *General Terms*

3           Class Members shall not be required to submit a claim in order to receive a share of the  
4 Net Settlement Amount, and no portion of the Maximum Settlement Amount shall revert to Core-  
5 Mark or result in an unpaid residue. No later than ten (10) days after the Effective Date, Core-  
6 Mark shall provide to the Settlement Administrator in any feasible manner, including, but not  
7 limited to, by way of a wire transfer, the Maximum Settlement Amount plus Employer's Share  
8 of Payroll Taxes. In no event shall there be any distribution from the Maximum Settlement  
9 Amount until after the Effective Date and all conditions precedent specified in this Stipulation  
10 have been completely satisfied. If this Settlement is not finally approved by the Court in full, or  
11 is terminated, rescinded, canceled or fails to become effective for any reason, or if the Effective  
12 Date does not occur, then no Maximum Settlement Amount shall be paid.

13                   2.     *Individual Settlement Payments*

14           Individual Settlement Payments shall be paid by the Settlement Administrator from the  
15 Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Individual  
16 Settlement Payments shall be mailed by the Settlement Administrator by regular First Class U.S.  
17 Mail to each Participating Class Member's last known mailing address within fourteen (14) days  
18 after Core-Mark provides the Settlement Administrator with the Maximum Settlement Amount.  
19 Individual Settlement Payments shall be allocated as follows: 20% as wages subject to all  
20 applicable tax withholdings, and 80% as non-wage penalties and interest not subject to payroll  
21 tax withholdings. The Settlement Administrator shall issue an IRS Form W-2 to each  
22 Participating Class Member for the portion of the Individual Settlement Payment allocated as  
23 wages and subject to all applicable tax withholdings. The Settlement Administrator shall issue  
24 an IRS Form 1099 to each Participating Class Member for the portion of the Individual  
25 Settlement Payment allocated as non-wage penalties and interest and not subject to payroll tax  
26 withholdings.

27           Each Participating Class Member's Individual Settlement Payment shall be calculated  
28 solely by the Settlement Administrator according to the following formula: Core-Mark shall

1 provide the Settlement Administrator with the Compensable Workweeks for each Participating  
2 Class Member; the Settlement Administrator shall then (1) divide the Compensable Workweeks  
3 worked by each Participating Class Member by the total Compensable Workweeks worked by  
4 all Participating Class Members, and (2) multiply the result in (1) by the Net Settlement Amount.  
5 The Individual Settlement Payment will be reduced by any required legal deductions for each  
6 Participating Class Member.

7 Individual Settlement Payments shall be made by check and shall be made payable to  
8 each Participating Class Member as set forth in this Stipulation.

9 The Settlement Administrator will remit the entire amount of each Participating Class  
10 Member's Individual Settlement Payment as follows: Any checks issued by the Settlement  
11 Administrator to Participating Class Members shall be negotiable for one hundred and eighty  
12 (180) calendar days. Those funds represented by settlement checks returned as undeliverable  
13 and those settlement checks remaining uncashed for more than 180 days after issuance shall be  
14 distributed to the Controller of the State of California to be held pursuant to the Unclaimed  
15 Property Law, California Civil Code Section 1500 et seq., for the benefits of those Participating  
16 Class Members who did not cash their checks until such time they claim their property. The  
17 Parties agree that this disposition results in no "unpaid residue" under California Code of Civil  
18 Procedure Section 384, as the entire net settlement proceeds will be paid out to Participating  
19 Class Members, whether or not they all cash their settlement checks.

20 3. *Individual Settlement Payments Do Not Trigger Employment Relationship*  
21 *or Additional Benefits*

22 All monies received by Participating Class Members under the Settlement which are  
23 attributable to wages shall constitute income to such Participating Class Members solely in the  
24 year in which such monies actually are received by the Participating Class Members. It is  
25 expressly understood and agreed that the receipt of Individual Settlement Payments shall not  
26 entitle any Participating Class Member to additional compensation or benefits under any  
27 collective bargaining agreement or under any bonus, contest or other compensation or benefit  
28 plan or agreement in place during the period covered by the Settlement, nor shall it entitle any

1 Participating Class Member to any increased pension and/or retirement, or other deferred  
2 compensation benefits. It is the intent of the Parties that Individual Settlement Payments  
3 provided for in this Stipulation are the sole payments to be made by Core-Mark to Participating  
4 Class Members in connection with this Settlement, with the exception of Plaintiffs, and that the  
5 Participating Class Members are not entitled to any new or additional compensation or benefits  
6 as a result of having received the Individual Settlement Payments (notwithstanding any contrary  
7 language or agreement in any collective bargaining agreement or in any benefit or compensation  
8 plan document that might have been in effect during the period covered by this Settlement).  
9 Furthermore, the receipt of Individual Settlement Payments by Participating Class Members shall  
10 not, and does not, by itself establish any general, special, or joint employment relationship  
11 between and among the Participating Class Member(s) and Core-Mark.

12 *4. Class Representative Service Award*

13 Subject to Court approval, each Plaintiff shall be paid a Class Representative Service  
14 Award not to exceed five thousand dollars and zero cents (\$5,000.00), or any lesser amount as  
15 awarded by the Court, for their time and effort in bringing and presenting the Action and for  
16 releasing their Released Claims. Core-Mark agrees not to oppose or object to this request. The  
17 Class Representative Service Awards shall be paid to Plaintiffs from the Maximum Settlement  
18 Amount no later than fourteen (14) days after Core-Mark provides the Settlement Administrator  
19 with the Maximum Settlement Amount. The Settlement Administrator shall issue an IRS  
20 Form 1099 to each Plaintiff for his respective Class Representative Service Award. Plaintiffs  
21 shall be solely and legally responsible to pay any and all applicable taxes on their respective  
22 Class Representative Service Awards and shall hold harmless Core-Mark, Class Counsel, and  
23 Defense Counsel from any claim or liability for taxes, penalties, or interest arising as a result of  
24 payment of the Class Representative Service Awards. The Class Representative Service Awards  
25 shall be made in addition to the Plaintiffs' Individual Settlement Payments. Any amount  
26 requested by Plaintiffs for the Class Representative Service Awards and not awarded by the Court  
27 shall become part of the Net Settlement Amount and shall be distributed to Participating Class  
28 Members as part of their Individual Settlement Payments.



1                               5.       *Class Counsel Award*

2               Subject to Court approval, Class Counsel shall be entitled to receive reasonable attorneys’  
3 fees in an amount not to exceed thirty-three and one-third percent (33 1/3%) of the Maximum  
4 Settlement Amount, which amounts to two hundred, forty-one thousand, six hundred, sixty-six  
5 dollars and sixty-four cents (\$241,666.64). In addition, subject to Court approval, Class Counsel  
6 shall be entitled to an award of reasonable costs associated with Class Counsel’s prosecution of  
7 the Action in an amount not to exceed thirty thousand dollars and zero cents (\$30,000.00). Class  
8 Counsel shall provide the Settlement Administrator with a properly completed and signed IRS  
9 Form W-9 in order for the Settlement Administrator to process the Class Counsel Award  
10 approved by the Court. Core-Mark agrees not to oppose or object to Plaintiffs’ request for an  
11 award of attorneys’ fees not to exceed two hundred, forty-one thousand, six hundred, sixty-six  
12 dollars and sixty-four cents (\$241,666.64) and request for an award of reasonable costs not to  
13 exceed thirty thousand dollars and zero cents (\$30,000.00). In the event the Court awards Class  
14 Counsel less than two hundred, forty-one thousand, six hundred, sixty-six dollars and sixty-four  
15 cents (\$241,666.64) in attorneys’ fees and/or less than thirty thousand dollars and zero cents  
16 (\$30,000.00) in costs, the difference shall become part of the Net Settlement Amount and shall  
17 be distributed to Participating Class Members as part of their Individual Settlement Payments.  
18 Class Counsel shall be paid any Court-approved attorneys’ fees and costs from the Maximum  
19 Settlement Amount no later than fourteen (14) days after Core-Mark provides the Settlement  
20 Administrator with the Maximum Settlement Amount. Class Counsel shall be solely and legally  
21 responsible to pay all applicable taxes on the Class Counsel Award. The Settlement  
22 Administrator shall issue an IRS Form 1099 to Class Counsel for the Class Counsel Award.

23                               6.       *Settlement Administration Costs*

24               The Settlement Administrator shall be paid from the Maximum Settlement Amount for  
25 the Settlement Administration Costs, which are estimated not to exceed fifteen thousand dollars  
26 and zero cents (\$15,000.00). To the extent actual Settlement Administration Costs are greater  
27 than fifteen thousand dollars and zero cents (\$15,000.00), such excess amount shall be taken out  
28 of the Maximum Settlement Amount. Any portion of the estimated or designated Settlement

Administration Costs that are not in fact required to fulfill the total settlement administration costs shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Payments. Prior to Plaintiffs filing a motion for final approval of this Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and to minimize Settlement Administration Costs.

The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities required by the Settlement. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund (“QSF”) pursuant to IRS rules and regulations in which the Maximum Settlement Amount shall be placed and from which payments required by the Settlement shall be made.

The Settlement Administrator shall be entitled to withdraw from the QSF its Settlement Administration Costs no earlier than fourteen (14) days after Core-Mark provides the Settlement Administrator with the Maximum Settlement Amount.

*7. Payment to the LWDA*

Ten Thousand Dollars (\$10,000.00) from the Maximum Settlement Amount shall be allocated to penalties under PAGA, of which Seven Thousand Five Hundred Fifty Dollars (\$7,500.00) shall be paid by the Settlement Administrator directly to the LWDA. The remaining Two Thousand Five Hundred Fifty Dollars (\$2,500.00) shall be part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Payments.

**H. Final Settlement Approval Hearing and Entry of Final Order and Judgment**

Upon expiration of the Response Deadline, a Final Approval Hearing shall be conducted to determine whether to grant final approval of the Settlement, including determining the amounts

properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Service Awards; and (iii) the payment to the LWDA. Prior to the Final Approval Hearing, the Settlement Administrator shall provide a written report or declaration to the Parties describing the process and results of the administration of the Settlement to date, which report or declaration shall be filed by Plaintiffs with the Court prior to the Final Approval Hearing. If the Court grants final approval of the Settlement, the Settlement Administrator shall post notice of final judgment on its website within seven (7) calendar days of entry of the Final Order and Judgment.

**I. Nullification of Settlement**

In the event: (i) the Court does not enter the Preliminary Approval Order; (ii) the Court does not grant final approval the Settlement; (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not become final for any other reason, this Stipulation shall be rendered null and void, any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning, this Stipulation and any documents related to it shall not be used by any Class Member or Class Counsel to support any claim or request for class certification in the Action, and shall not be used in any other civil, criminal or administrative action against Core-Mark or any of the other Released Parties, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Stipulation, and the Parties shall proceed in all respects as if this Stipulation had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be the equal responsibility of the Parties and paid to the Settlement Administrator equally by the Parties. In the event an appeal is filed from the Court's Final Order and Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review. Any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Order and Judgment, or any other appellate review, shall be the equal responsibility of the Parties and paid to the Settlement Administrator equally by the Parties.

**J. Termination Provision.** Notwithstanding any other provision of this Settlement, Core-Mark shall retain the right, in the exercise of its sole discretion, to nullify the Settlement

1 within thirty (30) days after expiration of the Response Deadline if more than five percent (5%)  
2 of the Class Members opt out of this Settlement.

3 **K. Class Size.** The fund specifically contemplates as of April 1, 2020, a total Class  
4 Size of 985 Class Members, and is based on this class size. If the Class Size as of the date of  
5 preliminary approval is determined to be more than a 10% increase of this figures, Core-Mark  
6 shall increase its contribution to the Fund on a pro-rata basis for each additional Class Member.

7 **L. No Admission by Defendant.** Core-Mark denies all claims alleged in the Action  
8 and denies all wrongdoing whatsoever. Neither this Stipulation, nor any of its terms and  
9 conditions, nor any of the negotiations connected with it, is a concession or admission, and none  
10 shall be used against Core-Mark as an admission or indication with respect to any claim of any  
11 fault, concession, or omission by Core-Mark or that class certification is proper under the  
12 standard applied to contested certification motions. The Parties stipulate and agree to the  
13 certification of the proposed class for settlement purposes only. As part of this Settlement, Core-  
14 Mark shall not be required to enter into any consent decree nor shall Core-Mark be required to  
15 agree to any provision for injunctive or prospective relief. The Parties further agree that this  
16 Stipulation will not be admissible in this or any other proceeding as evidence that either (i) a  
17 class action should be certified or (ii) Core-Mark is liable to Plaintiffs or any Class Member,  
18 other than according to the terms of this Stipulation.

19 **M. Exhibits and Headings.** The terms of this Stipulation include the terms set forth  
20 in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.

1 The Exhibits to this Stipulation are an integral part of the Settlement. The descriptive headings  
2 of any paragraphs or sections of this Stipulation are inserted for convenience of reference only.

3 **N. Interim Stay of Action.** The Parties agree to stay and to request that the Court  
4 stay all proceedings in the Action, except such proceedings necessary to implement and complete  
5 the Settlement and enter the Final Order and Judgment.

6 **O. Amendment or Modification.** This Stipulation may be amended or modified  
7 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

8 **P. Entire Agreement.** This Stipulation and any attached Exhibits constitute the  
9 entire agreement between the Parties, and no oral or written representations, warranties, or  
10 inducements have been made to Plaintiffs or Core-Mark concerning this Stipulation or its  
11 Exhibits other than the representations, warranties, and covenants contained and memorialized  
12 in this Stipulation and its Exhibits. No other prior or contemporaneous written or oral agreements  
13 may be deemed binding on the Parties.

14 **Q. Authorization to Enter into Settlement Agreement.** Class Counsel and  
15 Defense Counsel warrant and represent they are expressly authorized by the Parties whom they  
16 represent to negotiate this Stipulation and to take all appropriate actions required or permitted to  
17 be taken by such Parties pursuant to this Stipulation to effectuate its terms, and to execute any  
18 other documents required to effectuate the terms of this Stipulation. The Parties, Class Counsel  
19 and Defense Counsel shall cooperate with each other and use their best efforts to complete the  
20 implementation of the Settlement. In the event the Parties are unable to reach agreement on the  
21 form or content of any document needed to implement the Settlement, or on any supplemental  
22 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may  
23 seek the assistance of the Court and/or mediator Jeffrey Krivis to resolve such disagreement. The  
24 person signing this Stipulation on behalf of Core-Mark represents and warrants that he/she is  
25 authorized to sign this Stipulation on behalf of Core-Mark. Plaintiffs represent and warrant that  
26 they are authorized to sign this Stipulation and that they have not assigned any claim, or part of  
27 a claim, covered by this Settlement to a third party. The Parties have cooperated in the drafting  
28

1 and preparation of this Stipulation Agreement. Hence, in any construction made of this  
2 Stipulation, the same shall not be construed against any of the Parties.

3 **R. Binding on Successors and Assigns.** This Stipulation shall be binding upon, and  
4 inure to the benefit of, the successors and assigns of the Parties.

5 **S. California Law Governs.** All terms of this Stipulation and the Exhibits hereto  
6 shall be governed by and interpreted according to the laws of the State of California, without  
7 giving effect to any law that would cause the laws of any jurisdiction other than the State of  
8 California to be applied.

9 **T. Counterparts.** This Stipulation may be executed in one or more counterparts.  
10 All executed counterparts and each of them shall be deemed to be one and the same instrument.

11 **U. Fairness, Adequacy, and Reasonableness of Settlement.** Plaintiffs represent  
12 that this Settlement is a fair, adequate, and reasonable settlement of the Actions and they have  
13 arrived at this Settlement after extensive arms-length negotiations, taking into account all  
14 relevant factors, present and potential.

15 **V. Jurisdiction of the Court.** Following entry of the Final Order and Judgment, the  
16 Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement  
17 of the terms of this Stipulation and all orders and judgments entered in connection therewith, and  
18 the Parties, Class Counsel and Defense Counsel submit to the jurisdiction of the Court for  
19 purposes of interpreting, implementing, and enforcing the Settlement embodied in this  
20 Stipulation and all orders and judgments entered in connection therewith.

21 **W. Invalidity of Any Provision.** Before declaring any term or provision of this  
22 Stipulation invalid, the Parties request that the Court first attempt to construe the terms or  
23 provisions valid to the fullest extent possible consistent with applicable precedents so as to define  
24 all provisions of this Stipulation as valid and enforceable.

25 **X. Binding Nature of Notice of Class Action Settlement.** It is agreed that because  
26 the Class Members are so numerous, it is impossible or impractical to have each Class Member  
27 execute the Stipulation. The Class Notice shall advise all Class Members of the binding nature  
28

of the Settlement, and the release of Released Claims and shall have the same force and effect as if this Stipulation were executed by each Participating Class Member.

Y. **Confidentiality.** Plaintiffs and Class Counsel agree to keep the facts and terms of this Settlement confidential until the Preliminary Approval Order is sought from the Court, and, thereafter, to the fullest extent possible. Plaintiffs and Class Counsel also agree not to make or offer to make any public disclosure of the Settlement, other than what is necessary and consistent with the need for judicial approval of the Settlement and notice to Class Members. Class Counsel shall take all steps necessary to ensure that Plaintiffs are aware of, and will ensure that they adhere to, the restriction against any public disclosure of the terms of the Settlement. Class Counsel shall take all steps necessary to ensure that Plaintiffs are aware of, and will ensure that each adheres to, the terms of this paragraph.

[SIGNATURES ON FOLLOWING PAGE]

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DATE: May \_\_\_, 2020

\_\_\_\_\_  
Plaintiff Phillip Morgan

DATE: May \_\_\_, 2020


\_\_\_\_\_  
Plaintiff Bryon Unruh

DATE: May 12, 2020

Jonathan E. Stuhl  
For Core-Mark International, Inc.  
Name: Jonathan Stuhl  
Its: VP, Human Resources

DATE: May 12, 2020

FISHER & PHILLIPS LLP

By:   
LONNIE D. GIAMELA  
PHILIP J. AZZARA  
Attorneys for Defendant  
CORE-MARK INTERNATIONAL, INC.

DATE: May \_\_\_, 2020

MARLIN & SALTZMAN, LLP

By: \_\_\_\_\_  
STANLEY D. SALTZMAN  
Attorneys for Plaintiff  
PHILLIP MORGAN, individually and on behalf  
of all others similarly situated

DATE: May \_\_\_, 2020

MARA LAW FIRM

By: \_\_\_\_\_  
DAVID MARA  
JAMIE SERB  
TONY ROBERTS  
Attorneys for Plaintiff  
BRYON UNRUH, individually and on behalf of  
all others similarly situated



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DATE: April \_\_, 2020  
June 11, 2020

P. M. Morgan  
Plaintiff Phillip Morgan

DATE: April \_\_, 2020

Plaintiff Bryon Unruh

DATE: April \_\_, 2020

For Core-Mark International, Inc.  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DATE: April \_\_, 2020

FISHER & PHILLIPS LLP

By: \_\_\_\_\_  
LONNIE D. GIAMELA  
PHILIP J. AZZARA  
Attorneys for Defendant  
CORE-MARK INTERNATIONAL, INC.

DATE: April \_\_, 2020

MARLIN & SALTZMAN, LLP

By: \_\_\_\_\_  
STANLEY D. SALTZMAN  
Attorneys for Plaintiff  
PHILLIP MORGAN, individually and on behalf  
of all others similarly situated

DATE: April \_\_, 2020

MARA LAW FIRM

By: \_\_\_\_\_  
DAVID MARA  
JAMIE SERB  
TONY ROBERTS  
Attorneys for Plaintiff  
BRYON UNRUH, individually and on behalf of  
all others similarly situated

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DATE: April \_\_, 2020

\_\_\_\_\_  
Plaintiff Phillip Morgan

DATE: April \_\_, 2020

\_\_\_\_\_  
Plaintiff Bryon Unruh

DATE: April \_\_, 2020

\_\_\_\_\_  
For Core-Mark International, Inc.  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


DATE: April \_\_, 2020

FISHER & PHILLIPS LLP

By: \_\_\_\_\_  
LONNIE D. GIAMELA  
PHILIP J. AZZARA  
Attorneys for Defendant  
CORE-MARK INTERNATIONAL, INC.

DATE: ~~April \_\_, 2020~~  
June 11, 2020

MARLIN & SALTZMAN, LLP

By:   
STANLEY D. SALTZMAN  
Attorneys for Plaintiff  
PHILLIP MORGAN, individually and on behalf  
of all others similarly situated

DATE: April \_\_, 2020

MARA LAW FIRM


By: \_\_\_\_\_  
DAVID MARA  
JAMIE SERB  
TONY ROBERTS  
Attorneys for Plaintiff  
BRYON UNRUH, individually and on behalf of  
all others similarly situated

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DATE: May \_\_, 2020

\_\_\_\_\_  
Plaintiff Phillip Morgan

DATE: May 6, 2020

  
\_\_\_\_\_  
Plaintiff Bryon Unruh

DATE: May \_\_, 2020

\_\_\_\_\_  
For Core-Mark International, Inc.  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DATE: May \_\_, 2020

FISHER & PHILLIPS LLP

By: \_\_\_\_\_  
LONNIE D. GIAMELA  
PHILIP J. AZZARA  
Attorneys for Defendant  
CORE-MARK INTERNATIONAL, INC.

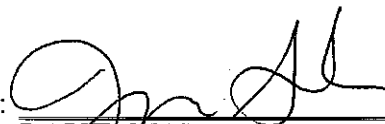
DATE: May \_\_, 2020

MARLIN & SALTZMAN, LLP

By: \_\_\_\_\_  
STANLEY D. SALTZMAN  
Attorneys for Plaintiff  
PHILLIP MORGAN, individually and on behalf  
of all others similarly situated

DATE: May 6, 2020

MARA LAW FIRM

By:   
\_\_\_\_\_  
DAVID MARA  
JAMIE SERB  
TONY ROBERTS  
Attorneys for Plaintiff  
BRYON UNRUH, individually and on behalf of  
all others similarly situated

# **EXHIBIT 1**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Morgan, et al. v. Core-Mark International, Inc.*  
Sacramento Superior Court Case No. 34-2018-00228207-CU-OE-GDS

*A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.*

IF YOU ARE OR WERE EMPLOYED BY CORE-MARK INTERNATIONAL, INC. (“DEFENDANT”) AS A DRIVER, TRUCK DRIVER, DRIVER HELPER, DRIVER TRAINER, AND/OR HOSTELER IN THE STATE OF CALIFORNIA AT ANY TIME BETWEEN MARCH 1, 2014 AND APRIL 1, 2020, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

### ***Why should you read this Notice?***

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled *Phillip Morgan, et al v. Core-Mark International, Inc.*, Sacramento Superior Court Case No. 34-2018-00228207-CU-OE-GDS (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning the Settlement will be held on [REDACTED], 2020 at 2:00 p.m. in Department 53 of the Sacramento Superior Court, Hall of Justice, located at 813 6th Street, Sacramento, California 95814, to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an Individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Stipulation of Class Action Settlement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>DO NOTHING</b>	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant as explained more fully below.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS</b>	You have the option to pursue separate legal action against Defendant about the claims in the lawsuits. If you choose to do so, you must exclude yourself, in writing, from the Settlement. As a result, you will not receive any benefits under the Settlement.
<b>OBJECT</b>	To object to the Settlement, you must write to the Court about why you don’t like the Settlement. This option is available only if you do <u>not</u> exclude yourself from the Settlement.

### ***Who is affected by this proposed Settlement?***

The Court has certified, for settlement purposes only, the following class (the “Class”):

All persons currently or formerly employed by Defendant as a driver, truck driver, driver trainer, and/or hosteler in the State of California at any time during the Class Period, from March 1, 2014 to April 1, 2020 (“Class Period”). This definition expressly excludes any “Class Member” whose employment with Defendant terminated on or before May 31, 2016 and who was included as a class member in the class action settlement in *Jonathan Upton and Keith Mills v. Core-Mark International, Inc.*, California Superior Court, County of San Francisco, case number CGC 15-549438.

According to Defendant’s records, you are a member of the Class (“Class Member”).

### ***What is this case about?***

In the Action, Plaintiffs Phillip Morgan and Bryon Unruh (“Plaintiffs”) allege on behalf of themselves and the Class the following claims: (1) Failure to Provide Meal Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (2) Failure to Provide Rest Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (3) Failure to Reimburse for Necessary Business Expenses – Cal. Labor Code § 2802; (4) Failure to Provide Adequate Wage Statements – Cal. Labor Code §§ 226, 226.2 and 226.3; (5) Unfair Competition – Cal. Bus. and Prof. Code § 17200 et seq.; and (6) Private Attorneys General Act – Cal. Labor Code § 2698 et seq.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiffs’ claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiffs also believe this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

### ***Who are the attorneys representing the Parties?***

The attorneys representing the Parties in the Action are:

#### **Class Counsel**

Stanley D. Saltzman  
MARLIN & SALTZMAN  
29800 Agoura Road, Ste. 210  
Agoura Hills, CA 91301

David Mara  
Jamie Serb  
Tony Roberts  
MARA LAW FIRM  
2650 Camino Del Rio North, Ste. 205  
San Diego, CA 92108

#### **CORE-MARK, INTERNATIONAL, INC.’s Counsel**

Lonnie D. Giamela  
Philip J. Azzara  
FISHER & PHILLIPS LLP  
2050 Main Street, Suite 1000  
Irvine, California 92614

### ***What are the Settlement terms?***

Subject to final Court approval, Defendant will pay \$725,000.00 (the “Maximum Settlement Amount”) for: (a) Individual Settlement Payments to Participating Class Members; (b) the Court-approved Class Representative Service Awards to Plaintiffs; (c) the Court-approved attorneys’ fees and costs to Class Counsel; (d) the costs of administering the Settlement; and (e) payment to the State of California Labor and Workforce Development Agency (“LWDA”) for PAGA penalties.

**Individual Settlement Payments.** After deduction from the Maximum Settlement Amount for attorneys’ fees and costs, the Class Representative Service Awards to Plaintiffs, the payment to the LWDA, and the costs of administering the Settlement, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an Individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement (“Participating Class Members”).

The Net Settlement Amount shall be divided among all Participating Class Members on a pro rata basis based upon the total number of workweeks worked by each respective Participating Class Member in a covered position during the Class Period, less any workweeks in the Class Period for which a Participating



Class Member received a settlement award or payment in connection with the previous class action case of *Jonathan Upon and Keith Mills v. Core-Mark International, Inc.*, California Superior Court, County of San Francisco case number CGC 15-549438. Your estimated Individual Settlement Payment is listed on the **Information Sheet** enclosed in this Notice Packet.

For tax reporting purposes, the payments to Participating Class Members will be allocated 20% as wages subject to all applicable tax withholdings and 80% as non-wage penalties and interest not subject to payroll tax withholdings. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of the Individual Settlement Payments.

All checks for Individual Settlement Payments paid to Participating Class Members shall advise that the checks will remain valid and negotiable for one-hundred eighty (180) days from the date of the checks' issuance. Those funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than 180 days after issuance shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500 et seq., for the benefits of those Participating Class Members who did not cash their checks until such time they claim their property.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Participating Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

**Class Counsel Attorneys' Fees and Costs, Class Representative Service Awards, Settlement Administration Costs and Payment to the LWDA.** Class Counsel will ask the Court to award attorneys' fees up to \$241,666.64 (33 1/3% of the Maximum Settlement Amount) and reimbursement of reasonable costs incurred in the Action not to exceed \$30,000.00. In addition, Class Counsel will ask the Court to authorize Class Representative Service Award payments of up to \$5,000.00 for each Plaintiff for their efforts in prosecuting the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$15,000.00. A payment in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties (representing 75% of the \$10,000.00 allotted to penalties under PAGA). The remaining 25% or \$2,500.00 will be allocated to the Net Settlement Amount and distributed to Participating Class Members.

#### ***What claims are being released by the proposed Settlement?***

Upon the Effective Date, Plaintiffs and each Participating Class Member shall be deemed to have fully, finally, and forever released Defendant from all Released Claims through the date of preliminary settlement approval by the Court. "Released Claims," as to each Participating Class Member, means any and all claims, demands, rights, liabilities, and/or causes of action that were pleaded in the Action or could have been pleaded based upon the factual allegations set forth in the operative pleadings filed in the Action and arising any time during the Class Period, including claims for: (1) Failure to Provide Meal Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (2) Failure to Provide Rest Breaks – Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order(s); (3) Failure to Reimburse for Necessary Business Expenses – Cal. Labor Code § 2802; (4) Failure to Provide Adequate Wage Statements – Cal. Labor Code §§ 226, 226.2 and 226.3; (5) Unfair Competition – Cal. Bus. and Prof. Code § 17200 et seq.; and (6) Private Attorneys General Act – Cal. Labor Code § 2698 et seq.

#### ***What are my options in this matter?***

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself

from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

**OPTION A. Remain in the Class.** If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Participating Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

**Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you must submit a written brief or statement of objection (“Notice of Objection”) to the Settlement Administrator at [Administrator], [Address], [City], [State] [Zip]. The Notice of Objection must: (1) state your full name; (2) state the grounds for the objection; (3) be signed by you; and (4) must be postmarked on or before [Response Deadline] and returned to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. Any Class Member who does not timely object in the manner described above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

**OPTION B. Request to Be Excluded from the Settlement.** If you do not want to be part of the Settlement, you must submit a Request for Exclusion to the Settlement Administrator at [Administrator], [Address], [City], [State] [Zip]. In order to be valid, your Request for Exclusion must (1) contain your name, address, and telephone number; (2) be signed by you; and (3) be postmarked on or before [Response Deadline]. If you do not timely submit a signed Request for Exclusion (as evidenced by the postmark), your Request for Exclusion will be rejected, you will be deemed a Participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you timely submit a signed Request for Exclusion, you will have no further role in the Action, and you will not be entitled to any benefit as a result of the Action and Settlement and will not be entitled to or permitted to assert an objection to the Settlement.

#### ***What is the next step in the approval of the Settlement?***

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Awards to Plaintiffs, the settlement administration costs, and the payment to the LWDA for PAGA penalties on \_\_\_\_\_, 2020 at 2:00 p.m. in Department 53 of the Sacramento Superior Court, Hall of Justice, located at 813 6<sup>th</sup> Street, Sacramento, California 95814. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

#### ***How can I get additional information?***

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Stipulation of Class Action Settlement. The Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the civil records office of the Sacramento County Superior Court. You may also request a copy of the stipulation of settlement from Class Counsel, at the addresses listed above.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.**



# **EXHIBIT 2**

## **INFORMATION SHEET**

*Morgan, et al. v. Core-Mark International, Inc.*  
*Sacramento Superior Court Case No. 34-2018-00228207-CU-OE-GDS*

**Calculation of Settlement Payments:** Each Participating Class Member's share of the Net Settlement Amount shall be based upon his or her "Compensable Workweeks," or the total number of workweeks worked by each respective Participating Class Member in a covered position, based upon Core-Mark International, Inc.'s ("Core-Mark") records, at any time from **March 1, 2014 to April 1, 2020** ("the **Class Period**"), less any workweeks in the Class Period for which a Participating Class Member received a settlement award or payment in connection with the previous class action case of *Jonathan Upon and Keith Mills v. Core-Mark International, Inc.*, California Superior Court, County of San Francisco case number CGC 15-549438. Each Participating Class Member's Individual Settlement Payment shall be calculated as follows:

Core-Mark shall provide the Settlement Administrator with the Compensable Workweeks for each Participating Class Member; the Settlement Administrator shall then (1) divide each Participating Class Member's Compensable Workweeks by the total Compensable Workweeks worked by all Participating Class Members, and (2) multiply the result by the Net Settlement Amount. This calculation yields the amount of the Participating Class Member's "Individual Settlement Payment." The Individual Settlement Payment will be reduced by any required legal deductions and/or payroll withholdings.

**Your Compensable Workweeks and Estimated Individual Settlement Payment:** According to Core-Mark's records, your Compensable Workweeks for the Class Period are **<<CompWeeks>>**. Based on the number of your Compensable Workweeks, **your estimated Individual Settlement Payment is <<EstSettPayment>>**. Please note that this is only an estimate; your actual payment may be greater or smaller than the amount reported above.

**Procedure for Disputing Information:** If you disagree with the number of Compensable Workweeks stated above, you must send a letter to the Settlement Administrator stating the reasons why you dispute the number of Compensable Workweeks and provide any supporting documentation that you have (e.g., any paystubs). The information you provide should include the estimated Compensable Workweeks you claim you worked from **March 1, 2014 to April 1, 2020**.

Any disputes and supporting documentation must be mailed to the Settlement Administrator at the address listed below by First Class U.S. Mail, postmarked no later than **[Response Deadline]**.

<b>[Settlement Administrator Name]</b>
<b>[Settlement Administrator Address]</b>
<b>[City, State Zip, Telephone Number]</b>

If you dispute the number of Compensable Workweeks stated above, Core-Mark's records will be presumed determinative unless you are able to provide documentation to the Settlement Administrator that establishes otherwise. The Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the Compensable Workweeks that should be applied and/or the Individual Settlement Payment to which you may be entitled. Such a determination will be final and binding with no opportunity for further appeal.