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15  
16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 PAUL VELIZ, *et al.*,

19 Plaintiffs,

20 vs.

21 CINTAS CORPORATION, *et al.*,

22 Defendants.

) Case No.: C:03-cv-1180 RS  
)  
) <sup>PS</sup>

) **[[PROPOSED] ORDER (1)**  
) **CONFIRMING FINAL**  
) **CERTIFICATION OF CLASSES AND**  
) **COLLECTIVE ACTION; (2)**  
) **GRANTING FINAL APPROVAL OF**  
) **CLASS AND COLLECTIVE ACTION**  
) **SETTLEMENT; AND (3) CONFIRMING**  
) **ARBITRATOR'S AWARD GRANTING**  
) **FINAL APPROVAL OF CLASS AND**  
) **COLLECTIVE ACTION SETTLEMENT**

) Date : June 3, 2011  
) Time : 2:30 p.m.  
) Courtroom 3, 17th Floor

See exhs for  
Arbitration

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1 **INTRODUCTION**

2 Plaintiffs have made an unopposed application for final approval of the Settlement  
3 Agreement (“Agreement”) which this Court preliminarily approved on December 8, 2010. *See*  
4 Dkt. #1639 (“December 8, 2010 Order”). The Court has read and carefully considered the  
5 Agreement and the exhibits appended thereto (attached hereto as Exhibit 1), as well as the briefs  
6 and arguments of counsel. Accordingly, it is hereby ORDERED as follows:  
7

8 **DEFINITIONS**

9 1. This Order incorporates by reference the Definitions contained in the Agreement,  
10 and all terms used in this Order shall have the same meaning as set forth in the Agreement.  
11

12 **JURISDICTION**

13 2. This Court has jurisdiction over the subject matter of this action and all matters  
14 relating thereto, and over all parties to this action.

15 **CONFIRMATION OF SETTLEMENT CLASSES**

16 3. The Court confirms as final its preliminary designation, in ¶5 of the December 8,  
17 2010 Order, of the class of FLSA Plaintiffs as an FLSA collective action for purposes of  
18 settlement.  
19

20 4. The Court confirms as final its preliminary certification, in ¶6 of the December 8,  
21 2010 Order, of the following classes for purposes of settlement:

22 a. A nationwide ERISA settlement class consisting of all persons employed by  
23 Cintas as Route Drivers at any time from march 19, 2000 through and  
24 including August 22, 2010, who were participants in or who were entitled  
25 to participate in, the Cintas Partners’ Plan.

26 b. An FLSA settlement class consisting of all plaintiffs who filed FLSA  
27 Consent-to-Sue forms in the FLSA collective action and (a) whose claims  
28

1 are currently pending in the *Veliz* litigation; (b) who were dismissed from  
 2 the *Veliz* litigation by reason of certain orders of the Court that remain  
 3 subject to appeal; or (c) who filed FLSA Consent-to-Sue forms and whose  
 4 FLSA claims were determined by the Court to be arbitrable.  
 5

- 6 c. State Law Subclasses consisting of all persons employed by Cintas as Route  
 7 Drivers in the following states from and through and including the dates  
 8 shown, to the extent such persons in the following states were not, or  
 9 arguably were not, a party to a binding arbitration agreement with Cintas:  
 10

State	State Law Class Period
California	from March 19, 1999 through August 22, 2010
Colorado	from May 26, 2000 through August 22, 2010
Connecticut	from May 26, 2001 through August 22, 2010
Illinois	from March 19, 2000 through August 22, 2010
Indiana	from May 26, 2000 through August 22, 2010
Kansas	from May 4, 2001 through August 22, 2010
Kentucky	from May 4, 1999 through August 22, 2010
Maine	from May 4, 1998 through August 22, 2010

<b>State</b>	<b>State Law Class Period</b>
Maryland	from April 20, 2001 through August 22, 2010
Massachusetts	from May 4, 2002 through August 22, 2010
Minnesota	from May 4, 2001 through August 22, 2010
Missouri	from May 26, 2001 through August 22, 2010
New Jersey	from March 19, 2001 through August 22, 2010
New Mexico	from May 4, 2003 through August 22, 2010
New York	from May 26, 1997 through August 22, 2010
Ohio	from May 4, 2002 through August 22, 2010
Oregon	from May 4, 2002 through August 22, 2010
Pennsylvania	from May 4, 2001 through August 22, 2010
Washington	from May 4, 2001 through August 22, 2010
West Virginia	from August 23, 2000 through August 22, 2010
Wisconsin	from May 4, 2002 through August 22, 2010

1  
2           5.       The Court confirms as final the appointment of the following individuals as  
3 representatives of the FLSA Collective Action and the ERISA Class: Michael Brown, Michael  
4 Clayton, Dennis Fedor, Drew Fuehring, Wilfredo Huertas, Daniel Peterson, Derrick Samuels, and  
5 Kelly Smith. The Court confirms as final the appointment of the following individuals as  
6 representatives of the State Law Subclasses: Paul Veliz (California), Carl Russell (California),  
7 David Anderson (California), Tom Jaramillo (Colorado), Barbara Cowles (Connecticut), Tade  
8 Wasmer (Illinois), Mark Anthony Feagin (Kansas), William Hehr II (Kentucky), R. Patrick Durkin  
9 (Massachusetts), Aaron Collins (Maryland), Randall Bowles (Maine), Jason Koste (Minnesota),  
10 Drew Fuehring (Missouri), Fred Migdol (New Jersey), Edward P. Garcia (New Mexico), Ronald  
11 Gardner (New York), Anthony Edwards (Ohio), Colby Jackson (Oregon), Brian Gilbert  
12 (Pennsylvania), Doug Choate (Washington), Paul Kushner (West Virginia), Robert DeGroot  
13 (Wisconsin), John Cruz (Indiana), Edward Evans (Kansas), Timothy Coleman (Maryland),  
14 Thomas Dollhopf (Wisconsin), Sean Eaton (Wisconsin), and Brian Gamble (Indiana).

15           6.       The Court confirms as final the appointment of plaintiffs' law firms, Robbins,  
16 Geller, Rudman & Dowd LLP, Altshuler Berzon LLP, and Traber & Voorhees, as Class Counsel  
17 for the FLSA Collective Action and the settlement classes.

18           7.       If, for any reason, the Settlement ultimately does not become effective, this order  
19 certifying the classes and collective action under Rule 23 and FLSA §216(b) shall be vacated; the  
20 parties shall return to their respective positions in this lawsuit as those positions existed  
21 immediately before the parties executed the Settlement Agreement; and nothing stated in the  
22 Settlement Agreement or any other papers filed with this Court in connection with the settlement  
23 shall be deemed an admission of any kind by any of the parties or used as evidence against, or over  
24 the objection of, any of the parties for any purpose in this action or in any other action.

#### 25 **SETTLEMENT APPROVAL**

26           8.       The Notice, Proof of Claim Form, and Request for Exclusion form given to class  
27 members pursuant to this Court's December 8, 2010 Order constituted the best notice practicable  
28

1 under the circumstances, was accomplished in all material respects, and fully met the requirements  
2 of Fed. R. Civ. P. 23(e), the FLSA, and due process.

3 9. Pursuant to Fed. R. Civ. P. 23(e), this Court grants final approval to the Settlement  
4 Agreement and the settlement set forth therein, and orders the parties to implement, and comply  
5 with, its terms. The Court finds that the Settlement is fair, reasonable, and adequate in all respects,  
6 and that it is binding on all class members who did not timely request exclusion from the  
7 Settlement pursuant to the procedures set forth in the Court's December 8, 2010 Order. The  
8 Court specifically finds that settlement is rationally related to the strength of plaintiffs' claims given  
9 the risk, expense, complexity, and duration of further litigation. This Court also finds that the  
10 Settlement Agreement is the result of arms'-length negotiation between experienced counsel  
11 representing the interests of the class and defendants, after thorough factual and legal  
12 investigation. The Court further finds that the response of the class to the Settlement Agreement  
13 supports final approval. Specifically, no class member objected to the proposed settlement.

14 10. The Court finds that the proposed plan of allocation is rationally related to the  
15 relative strengths and weaknesses of the respective claims asserted. The mechanisms and  
16 procedures set forth in the Agreement by which payments are to be calculated and made to class  
17 members filing timely claims are fair, reasonable, and adequate. Payment shall be made according  
18 to those allocations and pursuant to the procedure set forth in the Agreement.

19 11. The Court has reviewed plaintiffs' request for enhancement payments of \$2,500  
20 each to Michael Brown, Ricardo Brown, Michael Clayton, Dennis Fedor, Drew Fuehring,  
21 Wilfredo Huertas, Daniel Peterson, Derrick Samuels, Kelly Smith and Edwin Sullivan; and \$1,000  
22 each to Paul Veliz, Carl Russell, David Anderson, Tom Jaramillo, Barbara Cowles, Tade Wasmer,  
23 Mark Anthony Feagin, William Hehr II, R. Patrick Durkin, Aaron Collins, Randy Bowles, Jason  
24 Koste, Fred Migdol, Edward P. Garcia, Ronald Gardner, Anthony Edwards, Colby Jackson, Brian  
25 Gilbert, Doug Choate, Robert DeGroot, John Cruz, Edward Evans, Timothy Coleman, Thomas  
26 Dollhopf, Sean Eaton, Brian Gamble, and Paul Kushner. The Court finds that these requested  
27 enhancement payments are fair and reasonable, and shall be paid to the designated individuals in  
28 addition to any other Settlement Payment to which they are entitled under the Agreement.

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1           12.     Plaintiffs' request to permit the late filing of claims received through ~~May 1, 2011~~ is  
2 granted. The Court has discretion to approve the payment of untimely claims. *See, e.g., In re*  
3 *Gypsum Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977); *Zients v. LaMorte*, 459 F.2d 628  
4 (2d Cir. 1972). Plaintiffs have shown good cause why the ~~138~~<sup>136</sup> claims that were not postmarked  
5 by, or received by, the claims-filing deadline of April 7, 2011 should be accepted, and they are  
6 therefore deemed timely. For example, some claimants submitted written explanations that they  
7 experienced personal or family medical emergencies shortly before the claims-filing deadline of  
8 April 7, 2011, that precluded them from filing their claims by the deadline. Others explained that  
9 they did not timely receive the notice packet because it had been mailed to a former address and  
10 was not forwarded to the current address until after the April 7 deadline. Others explained that  
11 they had requested a remailed notice packet before the April 7 deadline, but did not receive the  
12 packet in time to submit the claim form by April 7. The acceptance of these ~~148~~<sup>136</sup> claims will not  
13 materially affect timely claimants' recovery, and does not delay the process of final approval or  
14 calculating or distributing the settlement proceeds. Under these circumstances, the Court finds  
15 good cause to deem these ~~148~~<sup>136</sup> claim forms timely submitted. PS

\$19,186.90

16           13.     Plaintiffs have requested approval of the payment of an additional ~~\$19,016.90~~ from  
17 the settlement for claims administration, for a maximum amount of \$81,186.90. Plaintiffs have  
18 demonstrated that their original estimate for the cost of claims administration was based on an  
19 estimate of a class size of 20,000. After Cintas produced the class member mailing list, the class  
20 proved to be significantly larger, resulting in increased costs to the Claims Administrator. In  
21 addition, plaintiffs asked the Claims Administrator to provide telephone support, which has proved  
22 to be a valuable and necessary tool for communicating with class members during the claims  
23 administration period. The Court finds that these additional expenses are reasonable and  
24 necessarily incurred. Therefore, plaintiffs' request for approval of the payment of up to  
25 \$81,186.90 from the settlement for claims administration is granted. It is not necessary to provide  
26 further notice to the class of this revised claims administration figure. Plaintiffs' original request  
27 for reasonable litigation costs to be paid from the settlement was \$720,000. The settlement notice  
28 informed all class members of that requested amount. No class members objected to that

RS

1 requested amount. In their motion for attorneys' fees and costs, plaintiffs have revised their cost  
2 request to less than \$695,000. Therefore, the additional amount requested at this time for claims  
3 administration does not affect the overall amount of settlement proceeds that the notice informed  
4 class members would be available for the payment of class members' claims.

5 14. A list of those class members who timely and validly requested exclusion from the  
6 Settlement is attached hereto as Exhibit 2.

7 15. By operation of this Order and the Judgment, all claims released by ¶¶69-71 of the  
8 Agreement are fully, finally, and forever released and discharged, except as to those class members  
9 who timely and validly requested exclusion from the settlement. The Court has reviewed the  
10 releases as set forth in ¶¶69-71 of the Settlement, Section D of the Proof of Claim Form, and the  
11 Judgment, and finds the releases to be fair, reasonable, and enforceable under the FLSA and all  
12 other applicable laws.

13 16. The Settled Actions are hereby dismissed with prejudice, each party to bear its own  
14 attorneys' fees and costs, except as provided by the Agreement and the Court's orders.

15 **CONFIRMATION OF ARBITRATION AWARD**

16 17. On December 8, 2010, the Hon. Bruce Meyerson (Ret.), the *Veliz* Arbitrator,  
17 issued an award granting preliminary approval of the Agreement and conditionally certifying  
18 classes for purposes of settlement as to those portions of this action over which he has jurisdiction.  
19 On June 3, 2011, the Arbitrator issued a Final Award finally approving the Agreement as  
20 to those portions of this action over which he has jurisdiction. No class member has objected to  
21 the settlement. Therefore, there is no party to the arbitration with standing to seek to vacate the  
22 Arbitrator's Final Award pursuant to 9 U.S.C. §10. Because the Final Award cannot be vacated, it  
23 must be confirmed. Therefore, the Court hereby CONFIRMS the Arbitrator's

24 June 3, 2011 Final Award.

25 **CONTINUING JURISDICTION**

26 18. The Court retains jurisdiction over this matter for purposes of resolving issues  
27 relating to the interpretation, administration, implementation, and enforcement of the Settlement  
28 Agreement.

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IT IS SO ORDERED.

Dated: June 3, 2011



Hon. Richard Seeborg  
United States District Judge