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\*E-Filed 4/23/09\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PAUL VELIZ, et al.,

NO. C 03-1180 RS

Plaintiffs,

**ORDER DENYING MOTIONS  
FOR SUMMARY JUDGEMENT  
FOR: (1) UNIFORM SSR  
MOTION;  
(2) UNIFORM/FACILITY SSR  
MOTION; (3) FACILITY SSR  
MOTION; (4) SAFETY SSR  
MOTION; AND (5) STATE LAW  
SSR MOTION**

v.

CINTAS CORPORATION, et al.,

Defendants.

I. INTRODUCTION

In four motions addressed by this order, Cintas Corporation (“Cintas”) seeks summary judgment on plaintiffs’ third claim for relief under the Fair Labor Standards Act (“FLSA”). A fifth motion is directed to related state law claims of certain plaintiffs. Cintas asserts, as an affirmative defense, that plaintiffs who transported or were subject to transporting interstate goods fall under the Motor Carrier Act (“MCA”) exemption to the FLSA. The first summary judgment motion (“uniform SSR motion”) is directed to the claim of 146 plaintiffs who served as Cintas Service Sales Representatives (“SSRs”). Cintas claims that these plaintiffs delivered or were subject to delivering new uniforms as well as products ordered from a Cintas catalog (“direct sale items”) whose transportation originated from out of state. The second summary judgment motion (“uniform/facility SSR motion”) is directed against 135 plaintiffs, most of whom also are targeted by the first motion, contending that these employees either delivered or were subject to delivering

1 facility service products in addition to new uniforms and direct sale items. These goods include  
2 soap and air freshener obtained by Cintas from out-of-state vendors. Cintas also raises the delivery  
3 of new floor mats imprinted with a customer's logo ("logo mats") in this second motion.

4 The third motion for summary judgment ("facility SSR motion") targets thirty-seven  
5 plaintiffs who do not admit to delivering uniforms as part of their regular job duties. For these  
6 plaintiffs, Cintas' motion relies upon plaintiffs' duty to deliver direct sale items, logo mats, soap,  
7 and air freshener. The fourth motion for summary judgment ("safety SSR motion") is directed to the  
8 FLSA claim of four SSRs who worked in Cintas' First Aid and Safety Division. Cintas asserts that  
9 these individuals delivered safety equipment including hard hats and safety glasses with customers'  
10 logos imprinted on them ("logo items") and defibrillators from out-of-state suppliers. Finally,  
11 Cintas moves for summary judgment on the state law claims of three plaintiffs ("state law SSR  
12 motion") who also are subject to the uniform and uniform/facility SSR motions based upon the same  
13 deliveries at issue in those motions.<sup>1</sup>

14 The MCA exemption has been addressed in several cases where employee-drivers crossed  
15 state lines or, while traveling intrastate, transported entire loads of interstate goods. The  
16 circumstances involved in this instance raise a few less common issues. The particular plaintiffs  
17 here never crossed state lines, but participated in delivering a disputed amount of interstate goods  
18 along with their regular duties involving the transport of otherwise in-state origin loads. Cintas  
19 claims that the MCA exemption applies to all employees *subject to* transporting goods in interstate  
20 commerce as a regular part of their job duties. While seeking collective treatment of their FLSA  
21 claim, as to Cintas' affirmative defense, plaintiffs counter that to prevail Cintas must demonstrate  
22 each individual SSR actually delivered more than a trivial amount of goods from out of state. In  
23 other words, according to plaintiffs, where an SSR's activity has an insignificant actual impact on  
24 interstate commerce, a *de minimis* exception to the MCA exemption arises.

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25  
26 <sup>1</sup> The state law SSR motion is based upon application by Missouri and Minnesota of  
27 the MCA exemption to overtime provisions arising under their respective state laws. For this  
28 motion, both parties agree that the scope of the MCA exemption recognized by those states is the  
same as that under the FLSA and therefore its outcome will mirror that of the uniform and  
uniform/facility motions.

1 For the reasons set forth below, in order to prevail on its motions Cintas must demonstrate  
2 that (1) particular goods delivered by plaintiffs physically traveled in interstate commerce and (2)  
3 individual plaintiffs participated in more than a *de minimis* amount of interstate activity. In this  
4 case, new uniforms, direct sale items, logo mats, logo items, and defibrillators ordered from out-of-  
5 state locations and delivered by plaintiffs traveled in interstate commerce. Deliveries of soap and air  
6 freshener, on the other hand, do not implicate interstate commerce for purposes of the MCA  
7 exemption. On the current record, Cintas fails to satisfy its burden of demonstrating that plaintiffs  
8 targeted by these motions delivered more than a *de minimis* amount of interstate items. Accordingly,  
9 Cintas' uniform SSR, uniform/facility SSR, facility SSR, safety SSR, and state law SSR motions for  
10 summary judgment will be denied.

## 11 II. BACKGROUND

12 Cintas supplies products and services to industrial customers including the supply of rental  
13 uniforms and laundry service of those items. As SSRs, plaintiffs drove trucks provided by Cintas  
14 while making regular deliveries to customers on their respective routes. Plaintiffs contend that  
15 Cintas violated the FLSA and the Employment Retirement Security Act of 1974, as well as various  
16 state laws, when it classified them as exempt employees who were not entitled to overtime pay. As  
17 stated above, Cintas contends that the MCA exemption covers employees who transported or were  
18 subject to transporting goods in the continuous stream of interstate commerce.

19 At issue in these motions, therefore, is whether various items that plaintiffs delivered as  
20 Cintas SSRs traveled in interstate commerce including new uniforms, direct sale items, logo mats,  
21 logo items, defibrillators, soap, and air freshener. The majority of plaintiffs subject to these motions  
22 serviced customers who rented employee uniforms from Cintas. These plaintiffs ("uniform SSRs")  
23 drove in-state routes as they delivered clean uniforms and retrieved dirty items for laundry service.  
24 As part of this operation, uniform SSRs also provided new uniforms as needed. Uniform SSR  
25 motion at 12. Customers, for example, might hire new employees or require replacement uniforms.  
26 When that occurred, SSRs were responsible for taking the employees' measurements and placing  
27 orders for new uniforms often manufactured outside the state of ultimate delivery. Some of these  
28 items might be obtained from local stock, while others were shipped from Cintas' distribution

1 centers for delivery by plaintiffs. *Id.* at 12-13. Cintas’ motions target plaintiffs who worked in  
2 states different from those where its distribution centers were located. Thus according to Cintas, all  
3 SSRs who regularly delivered uniforms also delivered or were subject to delivering *new* uniforms  
4 originating from out of state and intended for specific customers.

5 Cintas claims that uniform SSRs also delivered direct sale items and logo mats to their  
6 customers. Like new uniforms, these items were shipped from out of state pursuant to orders placed  
7 for specific customers. Direct sale items originated from Cintas distribution centers and either were  
8 shipped directly to customers or sent to local Cintas locations for delivery by plaintiffs. *Id.* at 14.  
9 Similarly, SSRs in the First Aid and Safety Division were responsible for transporting items from  
10 out-of-state suppliers to customers. While these plaintiffs regularly delivered a variety of products,  
11 logo items and defibrillators represent special-order items obtained only upon customer request.  
12 Safety SSR motion at 2.

13 Plaintiffs targeted by these motions also delivered facility service products to customers on  
14 their routes. Cintas claims that soap and air freshener were provided to specific customers with  
15 supply contracts based on anticipated need. According to Cintas, it was “general policy and  
16 practice” that its facilities order only enough soap and air freshener that they could “reasonably  
17 estimate” would supply existing customer needs for between one week and one month.  
18 Uniform/facility SSR motion at 15. Plaintiffs, on the other hand, argue that facility service products  
19 were ordered in bulk by Cintas and merely constitute stock or inventory items. Soap and air  
20 freshener were removed from the supply room as needed by plaintiffs without tracking by Cintas.  
21 Opposition to uniform/facility SSR motion at 24. One plaintiff stated he stored soap and air  
22 freshener on his truck for weeks at a time for use as needed. *Id.*

23 III. LEGAL STANDARD

24 A. Summary Judgment

25 A motion for summary judgment should be granted where there is no genuine issue of  
26 material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c);  
27 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The purpose of summary judgment  
28 “is to isolate and dispose of factually unsupported claims or defenses.” *Celotex v. Catrett*, 477 U.S.

1 317, 323-24 (1986). The moving party bears the initial burden of setting forth the basis for the  
2 motion and identifying relevant portions of the pleadings and evidence it believes demonstrates the  
3 absence of a triable issue of material fact. *Id.* at 323.

4 If the moving party meets its initial burden, the burden then shifts to the non-moving party to  
5 present specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*,  
6 477 U.S. at 324. The evidence and all reasonable inferences must be viewed in the light most  
7 favorable to the non-moving party. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d  
8 626, 630-31 (9th Cir. 1987). The non-moving party, however, “must do more than simply show that  
9 there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith*  
10 *Radio*, 475 U.S. 574, 588 (1986). Summary judgment is not appropriate if a reasonable jury could  
11 resolve a disputed issue of material fact in favor of the non-moving party. *Anderson*, 477 U.S. at  
12 248; *Barlow v. Ground*, 943 F.2d 1132, 1136 (9th Cir. 1991). If a rational trier of fact, considering  
13 the record as a whole, could not find for the non-moving party, there is no genuine issue for trial.  
14 *Matsushita*, 475 U.S. at 587.

15 B. Judicial Notice

16 As an initial matter pertaining to these motions, Cintas<sup>2</sup> and plaintiffs<sup>3</sup> each filed requests for  
17 judicial notice pursuant to Rule 201 of the Federal Rules of Evidence. A court “may take judicial  
18 notice of its own records, and documents that are public records and capable of accurate and ready  
19 confirmation by sources that cannot reasonably be questioned.” *Springate v. Weighmasters Murphy,*  
20 *Inc. Money Purchase Pension Plan*, 217 F. Supp. 2d 1007, 1013 (C.D. Cal. 2002) (citing *MGIC*

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21  
22 <sup>2</sup> Cintas seeks judicial notice of the following: Department of Transportation notice of  
23 interpretation, Application of the Federal Motor Carrier Safety Regulations, 46 Fed. Reg. 37,902  
24 (July 23, 1981); Department of Labor Wage & Hour Field Operations Handbook § 24e01 (1982);  
25 Department of Transportation Interstate Commerce Commission Policy Statement, Motor Carrier  
26 Interstate Transportation - From Out-of-State Through Warehouses to Points in Same State, 57 Fed.  
27 Reg. 19,812 (May 8, 1992); Department of Labor Wage & Hour Field Operations Handbook §  
28 24c06(a) (1999); Department of Labor January 13, 2006 opinion letter; Department of Labor April  
27, 2005 opinion letter; and Department of Labor January 11, 2005 opinion letter.

<sup>3</sup> Plaintiffs request the Court take judicial notice of the following: Department of Labor  
Wage & Hour Field Operations Handbook; Department of Labor July 5, 2005 opinion letter;  
Department of Labor September 28, 2004 opinion letter; California Industrial Welfare Commission  
Wage Order No. 6; and excerpts from the California Division of Labor Enforcement Policies and  
Interpretations Manual (June 2002).

1 *Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986)). The items identified by both sides are  
2 appropriately subject to judicial notice and the motions are unopposed. Accordingly, both judicial  
3 notice motions will be granted.

4 IV. DISCUSSION

5 A. MCA Exemption Generally

6 Cintas contends that plaintiffs are not covered by the maximum hour and overtime provisions  
7 of the FLSA under the MCA exemption. 29 U.S.C. § 213(b)(1). The MCA exemption applies to  
8 “any employee with respect to whom the Secretary of Transportation has power to establish  
9 qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title  
10 49.” *Id.* In accord with the regulatory authority of the Department of Transportation, the MCA  
11 exemption covers employees of motor private carriers who engage in activities affecting the safe  
12 operation of motor vehicles on public highways and involve the transportation of goods in interstate  
13 commerce. 49 U.S.C. § 31502. The MCA exemption is to be construed narrowly against employers  
14 and applies only to those falling “plainly and unmistakably within [the] terms and spirit” of the  
15 exemption. *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 396 (1960). Cintas bears the burden of  
16 proving the MCA exemption applies. *Id.* at 394 n.11; *Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151  
17 (9th Cir. 1983).

18 1. Goods Must Travel in the Practical Continuity of Interstate Commerce

19 Cintas’ motions for summary judgment are directed to those plaintiffs who did not actually  
20 cross state lines in the course of their duties as SSRs.<sup>4</sup> The MCA exemption may apply, nonetheless,  
21 to individuals whose own activities, while entirely intrastate in nature, are connected to goods  
22 traveling in interstate commerce. Interstate commerce includes the in-state transportation of goods  
23 in the “practical continuity of movement from the manufacturers or suppliers without the state,  
24 through [a] warehouse and on to customers whose prior orders or contracts are being filled . . . .”  
25 *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568-69 (1943) (holding that a break in the physical  
26 continuity in the transit of goods is not controlling); *see Klitzke v. Steiner Corp.*, 110 F.3d 1465,

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28 <sup>4</sup> On November 13, 2008, the Court granted in part and denied in part Cintas’ motion  
for summary judgment against plaintiffs who physically crossed state lines.

1 1469 (9th Cir. 1997).<sup>5</sup> Whether a particular shipment of goods comprises one leg of an interstate trip  
2 or represents a free-standing intrastate delivery depends upon the “essential nature” of the shipment  
3 as determined by the shipper’s “fixed and persisting transportation intent” at the time of shipment.  
4 *S. Pac. Trans. Co. v. ICC*, 565 F.2d 615, 617 (9th Cir. 1977). The shipper’s intent is ascertained  
5 from the facts and surrounding circumstances. *Id.*

6 In considering whether items traveled in interstate commerce, the Supreme Court addressed  
7 three categories of goods shipped from out of state to defendant’s warehouse prior to in-state  
8 delivery to customers.<sup>6</sup> *Jacksonville Paper*, 317 U.S. at 568-70. In *Jacksonville Paper*, defendant  
9 operated as a wholesale distributor of paper products. The first category of goods considered by the  
10 Court involved special orders placed by defendant for its customers, including items with customers’  
11 names printed on the products. *Id.* at 568. The second set of goods included items obtained for  
12 specific customers to fulfill a preexisting contract or understanding that products would be ordered.  
13 *Id.* In its analysis, the Court concluded that these two categories were indistinguishable in the  
14 context of interstate commerce. *Id.* at 569. In both cases, the existence of a special order, contract,  
15 or understanding prior to shipment supplied the requisite intent that the goods move in interstate  
16 commerce. *Id.*; see *Klitzke*, 110 F.3d at 1470 (holding MCA exemption applies to employee making  
17 in-state deliveries of items ordered for specific customers).

18 Additionally, the Court indicated that a third type of shipment, goods ordered in anticipation  
19 of the needs of specific customers, *may* fall within the practical continuity of interstate commerce.  
20 *Jacksonville Paper*, 317 U.S. at 570. Items shipped to defendant’s warehouse included products  
21 ordered for a “stable group” of its customers. *Id.* at 569. Defendant asserted that it could estimate  
22 with “considerable precision” the amount of goods required by these customers. *Id.* On the specific  
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24 <sup>5</sup> While recognizing the Ninth Circuit’s construction of the MCA exemption, plaintiffs  
25 contend that *Klitzke* was wrongly decided. Dkt. 1043 at 8. This Court need not reach that argument  
as *Klitzke* is the settled law of this Circuit and therefore it must be applied here.

26 <sup>6</sup> In *Jacksonville Paper*, the Court addressed the threshold issue of FLSA application to  
27 an employer engaged in interstate commerce. In other words, the case did not involve the MCA  
28 exemption, but rather the scope of the FLSA. The Ninth Circuit, however, has applied *Jacksonville  
Paper* to the meaning of interstate commerce within the context of the MCA exemption. See, e.g.,  
*Watkins v. Ameripride Servs.*, 375 F.3d 821, 826 (9th Cir. 2004).

1 facts before it, however, the Court concluded that defendant had not demonstrated with particularity  
2 that the goods in question were different from those acquired and held for local disposition. *Id.* at  
3 570.

4 Accordingly, courts require evidence beyond a stable customer base and historical  
5 purchasing patterns to demonstrate a shipper's "fixed and persisting intent."<sup>7</sup> The Ninth Circuit  
6 considered paper products transported from out of state to a company's distribution center based  
7 upon anticipated need. *Int'l Brotherhood of Teamsters*, 921 F.2d at 906. It held the goods remained  
8 in interstate commerce during later in-state delivery. *Id.* In that case, the company utilized storage-  
9 in-transit provisions to obtain contract shipping rates to and from the distribution center. *Id.* While  
10 the company did not know the products' final destination at the time of shipment to its distribution  
11 center, the court emphasized that use of such provisions demonstrated "a more specific intent" that  
12 the goods be shipped in interstate commerce. *Id.* at 909.

13 Facts beyond the existence of an ongoing supplier-customer relationship are necessary to  
14 support a conclusion that goods traveled in interstate commerce. *See, e.g., Ballou v. DET Distrib.*  
15 *Co.*, No. 3-03:1055, 2006 WL 2035729 (M.D. Tenn. July 17, 2006). In *Ballou*, salesmen for a  
16 wholesale beer distributor drove in-state routes servicing retail sites with products originating from  
17 out-of-state brewers. *Id.* at \*3. While the distributor operated the warehouse, brewers exerted  
18 control over storage conditions, one brewer was electronically connected to defendant's inventory  
19 system, and some product was shipped to the warehouse based upon pre-sales by the brewer directly  
20 with large retail customers. *Id.* at \*2. Under these facts, the court held that the distributor's  
21 salesmen delivered goods in interstate commerce and therefore were subject to the MCA exemption.  
22 *Id.* at \*14; *see also Foxworthy v. Hiland Dairy Co.*, 997 F.2d 670 (10th Cir. 1993) (applying MCA  
23 exemption to driver making in-state deliveries for dairy company where products were stored no  
24 more than three days before delivery, company maintained control over goods during storage, and

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26 <sup>7</sup> Cintas argues that in order to find a shipper did not intend products to move in  
27 interstate commerce, the Court must apply the three-part test established by the Interstate Commerce  
28 Commission. *See* 29 C.F.R. § 782.7(b)(2). The Ninth Circuit explains in *Int'l Brotherhood of  
Teamsters v. Interstate Commerce Commission*, 921 F.2d 904, 908 (9th Cir. 1990), however, that  
application of the "fixed and persisting intent rule to determine the essential nature of commerce"  
need not follow that test.

1 driver also picked up empty crates for return to out-of-state processing plant).

2 In summary, in order to invoke the MCA exemption, Cintas first must establish that plaintiffs  
3 transported products in interstate commerce. It may meet its burden by showing plaintiffs completed  
4 deliveries of out-of-state items obtained pursuant to specific customer orders. Alternately, Cintas  
5 may show that goods acquired in anticipation of existing customers' needs traveled in interstate  
6 commerce. In that instance, Cintas must support this conclusion with facts demonstrating that the  
7 shipper intended products to remain in interstate transport beyond Cintas' warehouse. In other  
8 words, Cintas cannot rely solely upon the existence of ongoing facility service contracts as evidence  
9 that third-party suppliers intended goods to travel in interstate commerce.

10 2. Employees' Interstate Activity Must Be More Than *De Minimis*

11 As discussed above, the MCA exemption applies to employees of motor private carriers who  
12 participate in activities affecting highway safety including transportation of goods in interstate  
13 commerce.<sup>8</sup> 49 U.S.C. § 31502. Under this framework, the parties do not contest that Cintas is a  
14 motor private carrier or that transporting interstate goods is an activity affecting highway safety.  
15 Instead, the parties dispute whether Cintas must demonstrate that plaintiffs' interstate activity was  
16 greater than *de minimis* for the MCA exemption to apply. Under *Klitzke*, employees who deliver  
17 products ordered for specific customers from out-of-state vendors transport goods in interstate  
18 commerce. 110 F.3d at 1470. That case, however, does not directly address the *de minimis* issue  
19 here because in *Klitzke* over half of the items delivered originated from out of state. *Id.* at 1467. In  
20 short, although *Klitzke* establishes the MCA exemption can apply to an employee driving a purely  
21 in-state route, it does not address whether more than a *de minimis* amount of interstate activity must  
22 be involved.

23 Cintas argues that because drivers have a direct impact on highway safety, the *de minimis*  
24 exception is inapplicable. Instead, an employee need only be "subject to" driving in interstate  
25 commerce as a regular part of his duties to fall under the MCA exemption. Cintas contends that  
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27 <sup>8</sup> The Court held in its November 13, 2008 order that on or after August 10, 2005 but  
28 before June 6, 2008, the MCA exemption only applies to drivers of vehicles weighing 10,001  
pounds or greater.

1 plaintiffs were responsible for servicing customers who might have ordered products such as new  
2 uniforms or logo items. In those instances, plaintiffs would be required to deliver the items as part  
3 of their regular job duties. In short, according to Cintas, plaintiffs were routinely subject to  
4 transporting goods in interstate commerce and therefore fall within the MCA exemption at all times.

5       Essentially, Cintas argues for a blanket application of the MCA exemption based on the job  
6 duties of plaintiffs as a whole.<sup>9</sup> Not surprisingly, plaintiffs counter that Cintas must show actual  
7 delivery of items in interstate commerce by each employee as well as that the amount of such  
8 activity was more than *de minimis*. Thus, the parties' positions present two distinct issues: (1)  
9 whether it is appropriate to apply the MCA exemption to plaintiffs as a group; and (2) if blanket  
10 application of the MCA exemption is not warranted, whether an individual's participation in  
11 interstate commerce must be more than *de minimis*.

12           a.       Blanket Application

13       Cintas insists that the MCA exemption applies to all plaintiffs who routinely were subject to  
14 delivering items in interstate commerce whether or not a particular plaintiff actually did so. In  
15 support of its position, Cintas relies on *Morris v. McComb*, 332 U.S. 422, 433-34 (1947), which held  
16 that the MCA exemption applied to all drivers of defendant's company, including two employees  
17 who had never actually driven goods in interstate commerce, but nonetheless were subject to driving  
18 those routes. As a result, Cintas contends that a *de minimis* exception is unavailable to employees  
19 subject to delivering goods in interstate commerce as a regular part of their duties.

20       *Morris*, however, does not extend as far as Cintas would have it. While the MCA exemption  
21 was applied there to two drivers who never drove interstate routes, the Court first required an overall  
22 factual showing relative to the employer's involvement in interstate commerce. *Id.* at 432-34.  
23 Defendant operated a general cartage business whose primary activity was transporting steel around  
24 Detroit, Michigan. *Id.* at 426. Approximately 4% of defendant's business involved routes between  
25 boat docks, railroad depots, and freight and truck terminals. *Id.* at 427. Drivers participated in

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27       <sup>9</sup> Cintas provides data for six named plaintiffs summarizing orders of out-of-state items  
28 placed for customers of these SSRs. It continues to assert, however, that such showing is not legally  
required. In fact, Cintas seeks partial summary judgment with respect to as of yet unidentified  
uniform delivering plaintiffs who were located in a state outside of Cintas' distribution centers.

1 interstate commerce, either by supplying one leg of continuous interstate transportation or by  
2 conducting the beginning or end of an interstate trip originating or terminating in Detroit. *Id.* These  
3 deliveries, while wholly within Michigan, indisputably involved the transportation of goods moving  
4 in interstate commerce. *Id.*

5 The Court considered in detail the percentage of trips which involved interstate commerce as  
6 well as the number of trips made by individual drivers. *Id.* at 432-34. Additionally, the drivers in  
7 *Morris* were assigned their trips indiscriminately. *Id.* at 433. As such, the Court considered it  
8 reasonable to find that 4% of interstate trips implicated all drivers for purposes of the MCA  
9 exemption. *Id.* at 434 (concluding that the safety hazard presented is the same as if each driver spent  
10 4% of his or her day in interstate commerce). Only after the Court concluded that these trips were “a  
11 natural, integral and apparently inseparable part of the common carrier service” did it extend the  
12 MCA exemption to all of defendant’s drivers across the board. *Id.* at 433-34.

13 Cintas argues that the delivery of out-of-state items is similarly a regular part of its business  
14 sufficient to trigger blanket application of the MCA exemption to all its uniform delivering SSRs.  
15 The facts offered by Cintas, however, are distinguishable from those in *Morris*. While only 4% of  
16 the *Morris* drivers’ trips involved interstate transportation, under the facts as presented, presumably  
17 100% of the goods in those trips traveled in interstate commerce. In this case, plaintiffs contend that  
18 their principal duties involved intrastate pick-up and delivery of uniforms. With no *de minimis*  
19 standard in place, Cintas’ position would result in one out-of-state item transforming a local delivery  
20 into an interstate trip to the same extent as if the driver crossed state lines, a proposition without any  
21 evident support in case precedent.

22 The Ninth Circuit has provided guidance on when the reasonable expectation that an  
23 employee will participate in interstate commerce triggers the MCA exemption. In *Reich v. Am.*  
24 *Driver Serv., Inc.*, 33 F.3d 1153, 1154 (9th Cir. 1994), defendant provided transportation of sugar  
25 beets from Wyoming to Montana. For the first months of each harvesting season, defendant’s  
26 business was entirely intrastate. *Id.* The district court held that because defendant had a reasonable  
27 expectation of participating in interstate commerce later in the harvest season, the MCA exemption  
28 applied to defendant’s business for the entire period. *Id.* at 1156. The Ninth Circuit, in overruling

1 the trial court decision, held that defendant’s reasonable expectation of involvement in interstate  
2 commerce at some point in the future was not sufficient to invoke the MCA exemption. *Id.* at 1159.  
3 Instead, such an expectation is properly considered only in the context of other drivers who have  
4 completed actual trips in interstate commerce. In that situation, “reasonable expectation” concerns  
5 whether a driver who had not made one of those interstate trips reasonably would be expected to do  
6 so. *Id.* Plaintiffs in this case drove individual routes and serviced specific customers. Because they  
7 did not comprise a pool of drivers with varied and indiscriminately assigned routes, an SSR’s  
8 general job duties do not reflect that every plaintiff reasonably was expected to participate in  
9 interstate commerce.

10 In the previous summary judgment order involving SSRs who crossed state lines, this Court  
11 held that the record was insufficient to show as a whole that plaintiffs were subject to crossing state  
12 lines at all times. Instead, the Court required evidence of each individual plaintiff’s state-line  
13 crossings. In other words, this Court indirectly rejected Cintas’ generalized reliance upon SSRs’ job  
14 duties to conclude that each SSR reasonably could be expected to participate in interstate commerce  
15 by crossing state lines. Here, where the summary judgment motions involve plaintiffs who drove  
16 entirely in-state routes, Cintas’ argument is even more tenuous.

17 On the current evidence, a blanket MCA exemption applied to all plaintiffs regardless of  
18 individual activities is unwarranted. Accordingly, to trigger the MCA exemption Cintas must  
19 demonstrate that a driver “participated” in interstate commerce. The next issue, therefore, is  
20 whether a *de minimis* standard applies to that requisite level of interstate activity.

21 b. Individual Application

22 Plaintiffs argue that the MCA exemption only applies to employees whose participation in  
23 interstate commerce is “substantial.” In particular, where a driver’s interstate activity arises only by  
24 virtue of delivering out-of-state goods, the activity must be more than *de minimis*. Under *Morris*,  
25 plaintiffs contend that Cintas previously acknowledged it must demonstrate that employees spent  
26 just over 3% of their time transporting out-of-state goods. Dkt. 1043 at 14. In fact, plaintiffs claim  
27 that the proportion of interstate goods delivered was less than 1%. *Id.* at 15.

28 Cintas counters with several cases where courts expressly considered and declined to apply a

1 *de minimis* standard to drivers. *See* uniform/facility SSR motion at 9. In those cases, however,  
2 employees crossed state lines, unlike the plaintiffs subject to these current motions.<sup>10</sup> Moreover, in a  
3 recent decision, a district court expressly rejected defendant’s contention that the *de minimis*  
4 standard may never apply to drivers, including those driving purely in-state routes. *Masson v.*  
5 *Ecolab*, No. 04-Civ. 4488 (MBM), 2005 WL 2000133, at \*8 (S.D.N.Y. 2005). In *Masson*, the court  
6 considered issues similar to those raised in Cintas’ motions for summary judgment. The plaintiffs  
7 worked for Ecolab servicing commercial dishwashing machines leased by the company to customers  
8 in Atlanta, Georgia. *Id.* at \*1. Each plaintiff had a specific set of customers to service and drove  
9 routes entirely within the state. *Id.* at \*1-2. On occasion, however, parts and other equipment from  
10 out of state were shipped to plaintiffs’ homes. *Id.* at \*2. Some of the equipment was kept as stock  
11 items; other parts were shipped in response to a specific customer’s needs. *Id.*

12 While the parties agreed that transportation of out-of-state parts by plaintiffs to fill specific  
13 customer orders constituted interstate commerce for purposes of the MCA exemption, the degree of  
14 such activity sufficient to trigger the exemption remained in dispute. *Id.* at \*7. Plaintiffs claimed  
15 that parts deliveries to specific customers occurred only under “extraordinary” circumstances. *Id.* at  
16 \*11. Just as Cintas contends now, Ecolab argued that because its customers theoretically could need  
17 replacement parts at any time, plaintiffs were subject to transporting goods in interstate commerce in  
18 the ordinary course of their duties. *Id.* at \*2, 11. The court nonetheless concluded at summary  
19 judgment that Ecolab had not established “the kind and extent of activities” triggering the MCA  
20 exemption as a matter of law. *Id.* at \*11.

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22 <sup>10</sup> Cintas is correct that in holding the MCA exemption applies to driver-employees,  
23 courts have stated that drivers should “seldom, if ever” fall under the *de minimis* rule. *Sinclair v.*  
24 *Beacon Gasoline Co.*, 447 F. Supp. 5, 11 (W.D. La. 1976); *see Friedrich v. U.S. Computer Servs.*,  
25 974 F.2d 409, 417 n.10 (3d Cir. 1992). In these instances, however, drivers engaged in interstate  
26 commerce by physically crossing state lines. In *Sinclair*, workers traveled between Alabama and  
27 Louisiana for their jobs maintaining gas pipelines. 447 F. Supp. at 7-8. In *Friedrich*, the employees  
28 frequently crossed state lines as part of their work servicing customers’ computers. 974 F.2d at 410.  
The *de minimis* question related to the amount of property carried (their tool kits), as opposed to the  
amount of interstate driving. *Id.* at 417; *see also Crooker v. Sexton Motors, Inc.*, 469 F.2d 206, 208  
(1st Cir. 1972) (plaintiff took delivery of automobiles in Massachusetts and transported them to New  
Hampshire); *Badgett v. Rent-way, Inc.*, 350 F. Supp. 2d 642, 646 (W.D. Pa. 2004) (employees  
picked up merchandise in Ohio for customers in Pennsylvania).

1           While the Ninth Circuit has not directly adopted the *de minimis* standard in a case such as  
2 this, neither has it embraced Cintas’ position that a *de minimis* exception for drivers is unavailable as  
3 a general proposition. For example, in *Am. Driver Serv.*, the court stated that if an employee’s  
4 participation in interstate commerce is *de minimis*, he may not be subject to the MCA exemption. 33  
5 F.3d at 1156 (citing *Coleman v. Jiffy June Farms, Inc.*, 324 F. Supp. 664, 669-70 (S.D. Ala. 1970)  
6 (involving *de minimis* exception applied to drivers)). As reflected in the *Masson* decision, no court  
7 has extended the MCA exemption as broadly as Cintas would have us do here. 2005 WL 2000133,  
8 at \*8.

9           Because plaintiffs’ interstate activity arises from the goods transported, not from actual  
10 border crossing, it would be particularly extreme to deny application of a *de minimis* standard in this  
11 context. By Cintas’ reasoning, carrying a single item in interstate commerce triggers the MCA  
12 exemption. As such, Cintas’ position appears to stretch the MCA exemption beyond its current  
13 application; an outcome which would be inconsistent with the narrow construction to be accorded to  
14 it. *Arnold*, 361 U.S. at 396. Accordingly, the MCA exemption cannot be applied absent a showing  
15 that a plaintiff participated in more than a *de minimis* level of interstate activity.

16           c.       *De Minimis* Level of Activity

17           As discussed above, several cases addressing the *de minimis* standard involve drivers who  
18 cross state lines. Of cases involving goods moving in interstate commerce, the more frequent  
19 situation involves delivery of entire shipments received from out of state. In other words, few cases  
20 combine the issues involved in Cintas’ motions for summary judgment. Here, drivers who never  
21 crossed state lines transported a disputed amount of interstate items along with their regular delivery  
22 of in-state goods.

23           While not directly addressing a *de minimis* exception, the Ninth Circuit in *Watkins* indicated  
24 that the proportion of interstate activity may be a relevant consideration by noting that the “great  
25 majority” of plaintiff’s work did not involve interstate commerce within the MCA exemption. 375  
26 F.3d at 826. Only 3% of plaintiff’s work even potentially implicated interstate commerce through  
27 delivery of goods from out of state. *Id.* In *Watkins*, as in this case, the plaintiff primarily picked up  
28 and delivered uniforms for laundry service. *Id.* at 824. In addition, he occasionally delivered new

1 uniforms and other items. *Id.* at 826. While not providing explicit guidance, the court’s analysis  
2 focused on the percentage of work that involved delivery of new materials, rather than on other  
3 factors such as the number of customers with out-of-state deliveries or the number of trips  
4 completed.

5 While Cintas argues that a *de minimis* standard is inapplicable, it previously acknowledged  
6 that it *could* prevail under *Morris* by demonstrating that plaintiffs spent over 3% of their time  
7 delivering interstate goods. As discussed below, plaintiffs submit evidence for certain SSRs that  
8 interstate items constituted 1% or less of the products they delivered. Plaintiffs contend that this  
9 level of interstate activity is *de minimis*. Short of arguing that the MCA exemption applies to drivers  
10 “subject to” transporting interstate goods, Cintas offers no alternative *de minimis* standard in  
11 response. Based on the current showing that interstate goods comprised 1% or less of plaintiffs’  
12 deliveries, the Court finds that this level of interstate activity is not sufficient as a matter of law to  
13 trigger the MCA exemption and enter judgment on plaintiffs’ claims.

### 14 3. The MCA Exemption Applies to a Four Month Period

15 As discussed above, Cintas argues that the MCA exemption applied to plaintiffs at all times  
16 because they were subject to delivering goods in interstate commerce as part of their regular job  
17 duties. Having failed to justify such a broad application of the MCA exemption, Cintas must  
18 demonstrate that plaintiffs actually participated in more than a *de minimis* amount of interstate  
19 commerce. As such, the final issue is whether a plaintiff’s participation in interstate commerce  
20 triggers application of the MCA exemption on a four month or week-by-week basis.

21 In its order involving Cintas employees who actually crossed state lines, this Court held that  
22 the appropriate test is whether an individual transported or was available to transport goods across  
23 state lines “from time to time within any four month period.” Plaintiffs contend that the Court did  
24 not consider, and therefore, the order does not address, individuals who never crossed state lines.  
25 Accordingly, plaintiffs revive their prior argument that the Department of Labor’s notice and  
26 comment regulation discussing the MCA exemption establishes that it should be applied on a week-  
27 by-week basis. 29 C.F.R. § 782.2(b)(3). The regulation states in relevant part:

28

1 [W]here the continuing duties of the employee's job have no substantial direct effect  
2 on such safety of operation or where such safety-affecting activities are so trivial,  
3 casual, and insignificant as to be de minimis, the exemption will not apply to him in  
4 any workweek so long as there is no change in his duties. [Citations omitted.] If in  
5 particular workweeks other duties are assigned to him which result, in those  
workweeks, in his performance of activities directly affecting the safety of operation  
of motor vehicles in interstate commerce on the public highways, the exemption will  
be applicable to him [sic] those workweeks, but not in the workweeks when he  
continues to perform the duties of the non-safety affecting job.

6 *Id.* Cintas claims that this section of the regulation addresses the situation where an employer  
7 assigns "other duties" in a workweek. In that instance, evaluation of the MCA exemption on a  
8 week-by-week basis may be appropriate to avoid over-application of the exemption to an employee  
9 normally employed in a non-safety affecting job. In this case, while Cintas bears the burden of  
10 demonstrating that plaintiffs delivered interstate goods to their regular customers, plaintiffs have not  
11 alleged, and there is no basis for considering, that these activities constitute a change of job duties.

12 As this Court discussed in its November 13, 2008 order, the Ninth Circuit relied upon the  
13 Department of Transportation's notice of interpretation to conclude that driving in interstate  
14 commerce triggers application of the MCA exemption for a four month period. *Am. Driver Serv.,*  
15 *Inc.*, 33 F.3d at 1156 (quoting 46 Fed. Reg. 37,902, 37,903 (1981)) ("Evidence of driving in  
16 interstate commerce or being subject to being used in interstate commerce should be accepted as  
17 proof that the driver is subject to [DOT jurisdiction] for a 4-month period from the date of the  
18 proof."). While *Am. Driver Serv.* involved drivers who crossed state lines, the court refers generally  
19 to "engaging in interstate commerce" as activity falling under the four month exemption. *Id.* In  
20 other words, once triggered, there is no authority for applying the MCA exemption differently based  
21 on whether employees engaged in interstate commerce by crossing state lines or transporting  
22 interstate goods. Consequently, a four month test will be applied to determine whether plaintiffs  
23 participated in interstate commerce.

24 In short, the following standard applies to Cintas' motions for summary judgment to dismiss  
25 plaintiffs' third claim for relief under the FLSA. Plaintiffs participated in interstate commerce  
26 within the meaning of the MCA exemption where they delivered items obtained from out of state  
27 pursuant to specific customer orders. Without additional facts demonstrating the shipper's intent,  
28 the delivery of goods obtained by Cintas based upon ongoing facility service contracts does not

1 subject plaintiffs to the MCA exemption. Cintas' allegation that plaintiffs were subject to delivering  
2 interstate goods at all times as part of their regular job duties is not sufficient to invoke application  
3 of the MCA exemption for all plaintiffs regardless of actual participation in interstate commerce.  
4 The MCA exemption applies to individual plaintiffs who participated in more than a *de minimis*  
5 amount interstate activity. To establish that a plaintiff engaged in more than a *de minimis* level of  
6 interstate commerce, Cintas must demonstrate that interstate goods constituted more than a minimal  
7 percentage, with 1% of the plaintiff's deliveries being insufficient to make that showing. Where a  
8 plaintiff's participation in interstate commerce triggers the MCA exemption, it will be applied for a  
9 four month period.

10 B. Specific Summary Judgment Motions

11 1. Uniform SSR Motion

12 Cintas seeks summary judgment against 146 plaintiffs who delivered uniforms as part of  
13 their regular duties as SSRs in Cintas' Rental Division. Cintas contends that these plaintiffs  
14 delivered or were subject to delivering new uniforms and direct sale items that originated from out  
15 of state.<sup>11</sup> Cintas also seeks partial summary judgment against additional plaintiffs, not yet  
16 identified, who were responsible for delivering uniforms and direct sale items from out of state.

17 The parties in this case acknowledge that *Klitzke*'s finding of continuous interstate  
18 transportation applies to the delivery of new uniforms and direct sale items. Similar to the  
19 transported goods in *Klitzke*, these items were ordered by Cintas for specific customers from out of  
20 state. As discussed above, Cintas' broad proposition that it only needs to demonstrate that uniform  
21 SSRs were subject to delivering interstate goods is inadequate. The limited evidence that Cintas  
22 presents as to actual deliveries includes the number of orders for direct sale items and new uniforms  
23  
24  
25

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26 <sup>11</sup> For activity between August 10, 2005 and June 5, 2008, the MCA exemption does  
27 not apply to drivers of vehicles weighing less than 10,001 pounds. Of the 146 plaintiffs subject to  
28 this motion, Cintas identified 102 whose employment terminated before August 10, 2005. It  
requests summary judgment with respect to the entire FLSA claim of those plaintiffs, as well as the  
portion of the claims before August 10, 2005, for the remaining forty-four plaintiffs.

1 from out of state placed for the customers of six named plaintiffs.<sup>12</sup> During the relevant time,  
2 plaintiffs served between 32 and 139 customers who ordered such items and the total number of  
3 separate interstate orders ranged from 115 to 1819. Order Re: Motions to Strike at 4-5. Cintas has  
4 demonstrated, at least as to these six individuals, that plaintiffs delivered goods in interstate  
5 commerce. In order to prevail, however, the deliveries must represent more than a *de minimis*  
6 amount of interstate activity.

7 In response, plaintiffs submit evidence for the six named plaintiffs, as well as four others,  
8 indicating that interstate items comprised 1% or less of their deliveries. *Id.* at 5. Plaintiffs also  
9 dispute the sufficiency of Cintas' evidence by arguing that items ordered for plaintiffs' customers  
10 were not necessarily delivered by plaintiffs. Cintas counters that the proportion of interstate goods  
11 is irrelevant and that it is not required to document exactly what was on each plaintiff's truck to  
12 establish that plaintiffs delivered or were subject to delivering items in interstate commerce. While  
13 the level of proof need not require documentation of every item plaintiffs actually delivered,  
14 evidence reflecting the proportion of interstate activity is applicable to whether the interstate activity  
15 was *de minimis* or not.

16 On the current record, new uniforms and direct sale items represented 1% or less of the  
17 goods that the six named plaintiffs delivered. Where plaintiffs drove in-state routes and otherwise  
18 transported intrastate goods, this level of interstate activity is not sufficient to trigger the MCA  
19 exemption as a matter of law. As for the remaining 140 plaintiffs, Cintas has not presented any  
20 evidence of their interstate deliveries. The uniform SSR motion for summary judgment, therefore, is  
21 denied as to all 146 plaintiffs, as well as any unnamed plaintiffs responsible for delivering new  
22 uniforms and direct sale items from out of state.<sup>13</sup>

23 2. Uniform/Facility SSR Motion

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25 <sup>12</sup> Cintas analyzed data from its database tracking customer orders for six named  
26 plaintiffs: Michael Clayton, Dennis Fedor, Drew Fuehring, Wilfredo Huertas, Jr., Daniel Peterson,  
and Kelly Smith.

27 <sup>13</sup> Because Cintas has not succeeded in invoking the MCA exemption for any period,  
28 the Court need not consider the weight of plaintiffs' trucks in this motion or the other motions  
addressed in this order.

1 Cintas moves for summary judgment on the claim of 135 plaintiffs under the FLSA third  
2 claim for relief. Of these plaintiffs, 125 also are subject to Cintas' uniform SSR motion for  
3 summary judgment discussed above.<sup>14</sup> As before, Cintas contends that plaintiffs delivered or were  
4 subject to delivering new uniforms, direct sale items, and logo mats originating out of state. In this  
5 motion, Cintas raises plaintiffs' deliveries of soap and air freshener as additional, separate grounds  
6 for invoking the MCA exemption.<sup>15</sup>

7 In support of this motion, Cintas does not provide any additional evidence regarding the  
8 amount of new uniforms, direct sale items, or logo mats delivered by plaintiffs. Therefore, as  
9 discussed above, Cintas has not met its burden of establishing that any plaintiff delivered more than  
10 a *de minimis* amount of these goods in interstate commerce. In addition, Cintas contends that  
11 facility services products, obtained pursuant to ongoing service contracts with customers, travel in  
12 interstate commerce. These items, detergent and air freshener, are not being shipped to fulfill  
13 preexisting orders for specific accounts. Instead, Cintas orders these goods based on estimates it  
14 claims reflect the short term needs of its regular customers. According to Cintas, therefore, the  
15 vendors' shipments of these goods in interstate commerce are not interrupted by a temporary stay in  
16 its warehouses.

17 The circumstances surrounding Cintas' soap and air freshener orders, however, are  
18 distinguishable from situations where the shipper owns or controls the warehouse and intends the  
19 products to continue in interstate commerce. In *Int'l Brotherhood of Teamsters*, for example, the  
20 company transported products from its manufacturing plants to its own distribution center before in-

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21  
22 <sup>14</sup> After ongoing dismissals, 131 plaintiffs remain subject to this motion. Of these,  
23 eighty-seven plaintiffs ended their employment with Cintas before August 10, 2005. For forty-four  
24 other plaintiffs, Cintas alleges that at least sixteen drove vehicles weighing 10,001 pounds or more  
on and after August 10, 2005. Cintas moves for partial summary judgment with respect to the  
remaining plaintiffs for the portions of their claims prior to August 10, 2005.

25 <sup>15</sup> In the event that the Court were inclined to grant the uniform/facility SSR, facility  
26 SSR and/or safety SSR motions, plaintiffs request as alternative relief that the Court defer ruling  
27 under Federal Rule of Civil Procedure 56(f). In response to evidence submitted by Cintas regarding  
28 the deliveries of soap, air freshener, logo items, and defibrillators, plaintiffs seek further discovery  
into these subjects. In light of the disposition of these motions, the Court need not reach plaintiffs'  
Rule 56(f) requests.

1 state delivery. 921 F.2d at 906. The company segregated out-of-state goods and maintained records  
2 tying inbound and outbound shipments together pursuant to storage-in-transit provisions. *Id.* at 910.  
3 In this case, shipments of soap and air freshener to Cintas' facilities originate from third-party  
4 vendors. There are no facts indicating the shippers thereafter maintained any interest or control over  
5 storage or future delivery of the goods. While Cintas attempts to introduce testimony that vendors  
6 intended products for further transport, its submissions are inadmissible hearsay. Order Re: Motions  
7 to Strike at 5-6. In this case, the storage of bulk facility service products in Cintas' warehouses for  
8 up to one month, followed by transfer to plaintiffs' truck for an additional time, appears to stretch  
9 the notion that the goods remained in interstate commerce.

10 Cintas does present admissible evidence for ten plaintiffs on the number of customers with  
11 soap or air freshener service and the number of days these plaintiffs visited such a customer. *Id.* at  
12 6. Plaintiffs dispute that invoices referring to soap or air freshener service establish that a driver  
13 actually delivered such items in any given week. Because the Court finds that plaintiffs' deliveries  
14 of these products were not in interstate commerce, the MCA exemption is not triggered regardless of  
15 the frequency of deliveries or amount of goods involved. Accordingly, the uniform/facility motion  
16 for summary judgment is denied.

17 3. Facility SSR Motion

18 In this motion, Cintas moves for summary judgment on the FLSA claim of thirty-seven  
19 plaintiffs. Unlike SSRs subject to the motions discussed above, these plaintiffs do not admit to  
20 delivering uniforms during their entire employment with Cintas. As such, Cintas raises products  
21 other than new uniforms in this motion, including soap, air freshener, logo mats, and direct-sale  
22 items. Cintas claims that these thirty-seven plaintiffs delivered or were subject to delivering these  
23 four products in interstate commerce.<sup>16</sup>

24 In support of this motion, Cintas does not present evidence relating to the amount or  
25 percentage of logo mats or direct sale items from out of state delivered by plaintiffs. Plaintiffs

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26 <sup>16</sup> For twenty-three of these plaintiffs, Cintas claims that employment terminated before  
27 August 10, 2005. Cintas alleges that eleven other plaintiffs drove vehicles weighing at least 10,001  
28 pounds on and after August 10, 2005. Cintas moves for partial summary judgment against the  
remaining plaintiffs for the portions of their claims prior to August 10, 2005.

1 submit deposition testimony that deliveries of new logo mats, at least for certain plaintiffs, occurred  
2 rarely or never. *Id.* at 7. As for soap and air freshener, these items are found not to constitute  
3 interstate goods for purposes of the MCA exemption. While Cintas presents admissible evidence as  
4 to seven plaintiffs regarding the percentage of customers with soap and air freshener service, these  
5 facts are unavailing where the goods are not delivered in interstate commerce. *Id.* Because Cintas  
6 has not demonstrated that plaintiffs participated in interstate commerce, the facility SSR motion for  
7 summary judgment is denied.

8 4. Safety SSR Motion

9 This motion for summary judgment is directed to the third claim for relief brought by four  
10 SSRs who worked in Cintas' First Aid and Safety Division. Cintas contends that plaintiffs Sherry  
11 Lay, Hisham Nijem, Claudio Atencio, and Kathleen Ferrari delivered logo items and defibrillators  
12 ordered for specific customers from out-of-state vendors.

13 Cintas presents evidence demonstrating that logo items and defibrillators were ordered for  
14 customers on plaintiffs' routes during the period of their employment at issue in this suit. The  
15 number of invoices generated for these items range from zero in one month for Ferrari to sixteen in  
16 fourteen months for Atencio. For the year prior to the period of Ferrari's claim, twenty-two invoices  
17 were generated. *Id.* at 8. Plaintiffs assert that it is improper to infer that these four SSRs actually  
18 made any deliveries of logo items or defibrillators based on the invoices alone. Atencio testifies that  
19 he does not recall ever selling or delivering a defibrillator to a customer. He describes the sale of  
20 safety glasses as the only logo item he sold and states that he never delivered them. Instead, he  
21 states that safety glasses might be shipped directly from the vendor or delivered by another driver.  
22 *Id.* While orders placed for plaintiffs' customers do support an inference that plaintiffs likely  
23 delivered such items, the evidence is not sufficient at summary judgment. To prevail, Cintas must  
24 establish that plaintiffs delivered more than a *de minimis* amount of such items in interstate  
25 commerce. Because there are factual disputes as to the frequency of such deliveries, the safety SSR  
26 motion for summary judgment is denied.

27 5. State Law SSR Motion

28 This motion for summary judgment is directed to the fourteenth claim for relief under

1 Minnesota law brought by Dennis Fedor and Daniel Peterson and the fifteenth claim for relief under  
2 Missouri law of Drew Fuehring. These three plaintiffs also are subject to Cintas' uniform and  
3 uniform/facility SSR motions. Because the overtime provisions of these states incorporate the MCA  
4 exemption, Cintas again seeks summary judgment based on plaintiffs' delivery of goods in interstate  
5 commerce. Both parties acknowledge that application of the MCA exemption under Minnesota and  
6 Missouri law is the same as under the FLSA. In this motion, Cintas does not raise any additional  
7 evidence of interstate activity by these plaintiffs. In accord with the rulings on Cintas' uniform and  
8 facility/uniform SSR motions, the state law SSR motion is denied.

9  
10 **V. CONCLUSION**

11 Accordingly, Cintas' motions for summary judgment, in particular the uniform SSR motion,  
12 the uniform/facility SSR motion, the facility SSR motion, the safety SSR motion, and the state law  
13 SSR motion, are each denied.

14 **IT IS SO ORDERED.**

15 Dated: 4/23/09

16   
17 RICHARD SEEBORG  
18 United States Magistrate Judge

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27 ORDER DENYING MOTIONS FOR SUMMARY JUDGEMENT FOR: (1) UNIFORM SSR MOTION;  
28 (2) UNIFORM/FACILITY SSR MOTION; (3) FACILITY SSR MOTION; (4) SAFETY SSR MOTION; AND  
(5) STATE LAW SSR MOTION

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