

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL VELIZ, et al.,

No. C 03-1180 RS (MEJ)

Plaintiff(s),

vs.

**ORDER RE AFFIRMATIVE
DEFENSE DISCOVERY**

CINTAS CORPORATION, et al.,

Defendant(s).

On April 28, 2009, the Court ordered the parties to meet and confer, and thereafter file a joint letter addressing how Magistrate Judge Seeborg's recent summary judgment orders affect the pending affirmative defense discovery dispute. (Dkt. #1570.) The Court is now in receipt of the parties' joint letter, (Dkt. #1583), and hereby ORDERS as follows:

- 1) Given Magistrate Judge Seeborg's rulings, Cintas has the opportunity to demonstrate that the individual plaintiffs delivered more than a *de minimis* amount of interstate items for purposes of the MCA exemption. Thus, it is clear that Cintas will not agree to Plaintiffs' proposed stipulations, which act as a waiver to any claim of exemption, and discovery in this area is appropriate.
- 2) The amount of discovery that is necessary remains unclear. In his ruling, Magistrate Judge Seeborg found that "the level of proof need not require documentation of every item plaintiffs actually delivered." (Dkt. #1583 at 18:13.) However, he also found that "evidence reflecting the proportion of interstate activity is applicable to whether the interstate activity was *de minimis* or not." (Dkt. #1583 at 18:14-15.)
- 3) Cintas contends that it has provided Plaintiffs the means to obtain the information they seek

1 through production of machine-searchable databases with which they can analyze the items
2 for which each individual plaintiff was responsible and the delivery destinations for all of the
3 plaintiffs in this case, as well as searchable payroll and invoice databases, pay plans, job
4 descriptions and policies, and personnel files with individual performance evaluations. In
5 response, Plaintiffs contend that this production does not satisfy Cintas' burden.
6 Accordingly, Cintas shall provide Plaintiffs with detailed instructions as to the locations and
7 methods that they may utilize in order to obtain the requested information for the sources
8 provided. Cintas shall also provide examples of the requested information for five individual
9 plaintiffs in a format that follows the instructions provided.

10 4) As Magistrate Judge Seeborg has ruled that deliveries of soap and air freshener do not
11 implicate interstate commerce for purposes of the MCA exemption, no further discovery is
12 necessary.

13 5) As Cintas has produced discovery as to the pay plan each plaintiff was subject to at what
14 times, no further discovery on this issue is necessary. Cintas need only provide the relevant
15 identifiers (i.e., date of production and Bates numbers) and any instructions necessary for
16 accessing and locating the information. Cintas shall also provide examples of the requested
17 information for five individual plaintiffs in a format that follows the instructions provided.

18 6) As Cintas has produced documents identifying the weight of trucks for all Plaintiffs, no
19 further discovery on this issue is necessary. Cintas need only provide the relevant identifiers
20 (i.e., date of production and Bates numbers) and any instructions necessary for accessing and
21 locating the information. Cintas shall also provide examples of the requested information for
22 five individual plaintiffs in a format that follows the instructions provided.

23 **Defendant shall comply with this Order within 21 days.**

24 **IT IS SO ORDERED.**

25
26 Dated: July 6, 2009



MARIA-ELENA JAMES
Chief United States Magistrate Judge