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15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 _____)
 18 PAUL VELIZ, *et al.*,)
 19 Plaintiffs,)
 20 vs.)
 21 CINTAS CORPORATION, *et al.*,)
 22 Defendants.)

Case No.: C:03-cv-1180 RS
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[PROPOSED] ORDER: (1)
PROVISIONALLY CERTIFYING
CLASS AND COLLECTIVE ACTION;
(2) GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (3) APPROVING
CLASS NOTICE AND MANNER OF
DISTRIBUTION; AND (4) SETTING
FINAL SETTLEMENT HEARING

23)
 24)
 25)
 26)
 27)
 28)
 Date : December 8, 2010
 Time : 1:30 P.M.
 Courtroom 3, 17th Floor

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1 **INTRODUCTION**

2 Plaintiffs have made an unopposed application pursuant to Fed. R. Civ. P. 23(e) for an
3 order preliminarily approving the settlement of this action pursuant to the Settlement Agreement
4 dated November 3, 2010 (the “Agreement”), which, together with the exhibits appended
5 thereto, sets forth the proposed terms and conditions for settlement of the action. The Court has
6 read and carefully considered the Agreement and the exhibits appended thereto, which are
7 attached hereto as Exhibit A. Accordingly, IT IS HEREBY ORDERED:

8 **DEFINITIONS**

- 9 1. This Order incorporates by reference the Definitions contained in the Agreement, and all
10 terms used in this Order shall have the same meaning as set forth in the Agreement.
- 11 2. “Days” as used herein shall refer to calendar days unless otherwise specified.
- 12 3. “Preliminary Approval” as used herein shall refer to the date of this Order or to the date of
13 the Order Granting Preliminary Approval of the Settlement in the *Veliz* Arbitration, whichever is
14 later.

15 **CONDITIONAL CERTIFICATION OF CLASSES AND COLLECTIVE ACTION**

- 16 4. Plaintiffs’ Motion for Conditional Class and Collective Action Certification is
17 GRANTED.
- 18 5. Pursuant to 29 U.S.C. §216(b), a collective action may be maintained by an employee or
19 employees on behalf of others who are “similarly situated.” The Court finds and concludes that
20 named plaintiffs are “similarly situated” to the other FLSA Plaintiffs, and on that basis
21 conditionally certifies the FLSA collective action for purposes of settlement only.
- 22 6. Pursuant to Fed. R. Civ. P. 23, the Court conditionally certifies the following classes for
23 purposes of settlement only:
- 24 a. A nationwide ERISA settlement class consisting of all persons employed by
25 Cintas as Route Drivers at any time from March 19, 2000 through and including August 22, 2010,
26 who were participants in or who were entitled to participate in the Cintas Partners’ Plan.
- 27 b. An FLSA settlement class consisting of all plaintiffs who filed FLSA Consent-to-
28 Sue forms in the FLSA collective action, and (a) whose claims are currently pending in the *Veliz*

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

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

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
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

State	State Law Class Period
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

7. In so certifying the ERISA Class, FLSA Class, and State Law Subclasses in the *Veliz* Litigation, the Court finds and concludes as follows. Each of the settlement classes is sufficiently numerous (estimated from 40 persons to 15,000-20,000 persons) that joinder would be impractical. The members of the settlement classes share common questions of law and fact, including: (1) whether Cintas has had a policy of improperly classifying class members as exempt employees for purposes of the FLSA and/or state wage and hour laws of the State Law Subclasses; (2) whether, if Cintas improperly classified class members as exempt, it did so knowingly, recklessly, or willfully; (3) whether Cintas' policies and conduct in classifying class members as exempt from overtime pay and its failure to compensate class members for overtime pay for which they are entitled violated the FLSA, the state wage and hour laws applicable to the State Law Subclasses and/or ERISA; (4) whether Cintas failed to credit Route Drivers for all overtime hours worked in connection with their participation in the Cintas Partners' Plan; (5) whether Cintas regularly failed to pay all overtime compensation due to Route Drivers who worked more than 40 hours in a week; and (6) whether Cintas failed to provide paid meal and rest periods within the meaning of the laws applicable to certain of the State Law Subclasses. Plaintiffs and their counsel will fairly and adequately represent the interests of absent class members. A class action is superior to other methods of adjudicating the present controversy.

8. Because certification of the classes is proposed in the context of a settlement, the Court need not inquire whether the case, if tried as a class action, would present intractable management problems.

9. The following named plaintiffs are hereby appointed as Class Representatives of the ERISA Class and Collective Action Representatives of FLSA Plaintiffs in the *Veliz* Litigation:

1 Michael Brown, Michael Clayton, Dennis Fedor, Drew Fuehring, Wilfredo Huertas, Daniel
2 Peterson, Derrick Samuels, and Kelly Smith. The following are hereby appointed as Class
3 Representatives of their respective State Law Subclasses: Paul Veliz (California), Carl Russell
4 (California), David Anderson (California), Tom Jaramillo (Colorado), Barbara Cowles
5 (Connecticut), Tade Wasmer (Illinois), Mark Anthony Feagin (Kansas), William Hehr II
6 (Kentucky), R. Patrick Durkin (Massachusetts), Aaron Collins (Maryland), Randall Bowles
7 (Maine), Jason Koste (Minnesota), Drew Fuehring (Missouri), Fred Migdol (New Jersey),
8 Edward P. Garcia (New Mexico), Ronald Gardner (New York), Anthony Edwards (Ohio), Colby
9 Jackson (Oregon), Brian Gilbert (Pennsylvania), Doug Choate (Washington), Paul Kushner (West
10 Virginia), Robert DeGroot (Wisconsin), John Cruz (Indiana), Edward Evans (Kansas), Timothy
11 Coleman (Maryland), Thomas Dollhopf (Wisconsin), Sean Eaton (Wisconsin), and Brian Gamble
12 (Indiana). The Court finds and concludes that there is a commonality of interest between the
13 named plaintiffs and the members of their respective settlement classes; and that the named
14 plaintiffs' claims are typical of the claims of absent members of their respective settlement
15 classes.

16 10. Pursuant to Fed. R. Civ. P. 23(g), the Court finds and concludes that plaintiffs' law firms
17 of Robbins Geller Rudman & Dowd LLP, Altshuler Berzon LLP, and Traber & Voorhees,
18 separately and collectively, have extensive experience and expertise in litigating complex
19 employment class and collective actions. Because these law firms and each of them meet all of
20 the standards set forth in Rule 23(g)(1)(A), these law firms are hereby appointed settlement class
21 counsel. Plaintiffs' law firms are also appointed counsel for the FLSA plaintiffs in the collective
22 action.

23 11. The Court hereby conditionally certifies, for purposes of settlement, the ERISA class
24 pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2). The Court hereby conditionally certifies, for
25 purposes of settlement, the State Law Subclasses pursuant to Fed. R. Civ. P. 23(b)(3) and the
26 FLSA Class pursuant to 29 U.S.C. §216(b) and Fed. R. Civ. P. 23(b)(3).

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1 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

2 12. This Court has reviewed the Settlement, finds that the proposed Settlement is within the
3 range of possible settlement approval, and hereby GRANTS plaintiffs' Motion for Preliminary
4 Approval of the Settlement.

5 13. No later than 10 business days after Preliminary Approval, Cintas shall deposit the
6 Settlement Amount (\$22,750,000.00) into an interest-bearing escrow account established by the
7 Claims Administrator.

8 **DATE AND TIME SET FOR FINAL SETTLEMENT APPROVAL HEARING**

9 14. The Court hereby sets a hearing ("Final Settlement Hearing") to take place on
10 June 3, 2011, at 2:30 a.m., in Courtroom 3 of the United States District Court for the
11 Northern District of California, San Francisco Division, to be held at the same time as the Final
12 Settlement Hearing to be held by Arbitrator Meyerson in the *Veliz* Arbitration.

13 15. At the Final Settlement Hearing, the Court will consider whether to give final approval to
14 the settlement as fair, reasonable, and adequate to Settling Plaintiffs; whether to enter final
15 judgment in this case that adjudicates the rights of all Settling Plaintiffs; whether to approve
16 enhancement payments as set forth in the Agreement; whether to award attorneys' fees and costs
17 to Plaintiffs' Attorneys, and if so, in what amount (not to exceed \$6,000,000.00 in fees and
18 \$720,000.00 in costs); and any other such matters as the Court should deem necessary.

19 16. The Final Settlement Hearing may be postponed, adjourned, or continued by order of this
20 Court without further notice to the class beyond that which is provided for below.

21 **APPOINTMENT OF THE CLAIMS ADMINISTRATOR**

22 17. Dahl, Inc. is appointed as the Claims Administrator subject to the terms and conditions of
23 the parties' Agreement, and shall perform all duties and responsibilities of the Claims
24 Administrator as set forth in that Agreement.

25 **APPROVAL OF CLASS NOTICE AND SETTING OF DEADLINES**

26 18. The Court finds that the proposed Original Notice, attached as Exhibit C to the
27 Agreement, fairly and adequately describes the terms of the Agreement to class members.
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1 19. The Court approves the Original Notice. Specifically, the Court is satisfied that the
2 Original Notice describes: the nature of the litigation; the scope of the settlement classes; the
3 terms of the proposed settlement; the claims procedure; the scope and effect of the release of
4 claims; the enhancement payments; Plaintiffs' Attorneys' proposed fee and cost application; the
5 process by which Settling Plaintiffs may opt out of and/or object to the Settlement, if any of them
6 so choose; and the date, time and location of the Final Settlement Hearing.

7 20. The Court finds that the Original Notice fulfills the class action notice requirements of
8 neutrality, completeness, and fairness.

9 21. The Court finds that the Class Notice and proposed distribution of such Notice by first-
10 class U.S. mail to the most recent mailing address of each Settling Plaintiff in Cintas' payroll
11 databases, or any more recent address obtained by Plaintiffs' Attorneys or the Claim
12 Administrator, satisfies the requirements of Fed. R. Civ. P. 23(e)(1) and due process. The Court
13 also finds that this method of Notice distribution provides the best notice practicable under the
14 circumstances and shall constitute due and sufficient notice to all persons entitled to such Notice.

15 22. No later than 10 business days after Preliminary Approval, Cintas shall provide to the
16 Claims Administrator a list of all Settling Plaintiffs, including each plaintiff's name, last known
17 address, social security number, the first date during the Relevant Limitations Period, if any, that
18 the person was a Route Driver, and the last date, if any, during the Relevant Limitations Period, if
19 any, that the person was a Route Driver, and the state or states where the person was so
20 employed, all as reflected in Cintas' payroll databases. Cintas shall also provide a verified
21 statement that the information was gathered by persons in the employ of Cintas or designated by
22 Cintas to act on its behalf and that the information provided correctly reflects what is in Cintas'
23 payroll databases.

24 23. At the same time that Cintas provides the list of Settling Plaintiffs to the Claims
25 Administrator, Cintas shall also provide a list of Settling Plaintiffs and their last known mailing
26 addresses to Steve Pepich of Robbins Geller Rudman & Dowd LLP. This list shall be identical to
27 the list provided to the Claims Administrator, except that it shall omit the Settling Plaintiffs'
28 social security numbers. Cintas may, at its option, provide this information in a secure, copy-

1 protected format. Regardless of the format in which this information is provided, Mr. Pepich and
2 Robbins Geller Rudman & Dowd LLP will treat such information as Highly Confidential –
3 Attorneys’ Eyes Only Information under the Stipulated Protective Order re Confidentiality
4 entered in the *Veliz* Litigation. Mr. Pepich and Robbins Geller Rudman & Dowd LLP shall not
5 disclose this information to anyone outside of Robbins Geller Rudman & Dowd LLP or anyone
6 within that law firm who does not have a legitimate need for it in performing the terms of the
7 Settlement Agreement, and will take all necessary steps to ensure that the information is kept
8 secure. Any person other than Mr. Pepich who gains access to such information shall comply
9 with the Stipulated Protective Order re Confidentiality entered in the *Veliz* Litigation.

10 24. No later than 10 business days after Preliminary Approval, the Parties shall provide the
11 Claims Administrator with electronic tables replicating those Exhibits to the Agreement that
12 contain lists of individuals which will be used by the Claims Administrator in carrying out its
13 duties. Plaintiffs’ Attorneys shall provide to the Claims Administrator any Settling Plaintiffs’
14 addresses known to them.

15 25. No later than 30 days after Preliminary Approval, the Claims Administrator shall mail the
16 Original Notice, Proof of Claim Form (Ex. D to the Settlement Agreement), and Request to Opt
17 Out Form (Ex. E to the Settlement Agreement) (hereinafter referred to collectively as the “Notice
18 Packet”) to each Settling Plaintiff according to the procedures as set forth in paragraphs 87-91 of
19 the Agreement. The Claims Administrator shall forward any Notice Packet returned as
20 undeliverable to the Settling Plaintiff addressee if the Claims Administrator obtains further
21 address information for that class member, pursuant to paragraph 90 of the Agreement. Any
22 Notice Packet that has been mailed and is not returned to the Claims Administrator as
23 undeliverable shall be deemed mailed and received by the Settling Plaintiff to whom it was
24 addressed.

25 26. Any person may request a Proof of Claim, even if he or she is not on the list of Settling
26 Plaintiffs provided by Cintas. The Claims Administrator shall send any such person a Notice
27 Packet by first class mail. The Claims Administrator shall process any unsolicited Proofs of
28 Claim in accordance with paragraph 101 of the Agreement.

1 27. Settling Plaintiffs shall have 90 days from the date of mailing of the Original Notice as set
2 forth in paragraph 26 this Order to submit an executed Proof of Claim Form or Request to Opt-
3 Out Form to the Claims Administrator. The Claims Administrator shall provide the Parties'
4 counsel with copies of any validly executed Request to Opt Out forms within 10 days of the
5 Claims Administrator's receipt of such forms. No later than 7 days after the close of the Claims
6 Period, the Claims Administrator shall provide the Parties' counsel with a complete and accurate
7 list of all Settling Plaintiffs who have timely requested to opt out of the Settlement.

8 28. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), any class member may exclude himself from the
9 Settlement. The Court finds that a 90-day period for submitting an executed Request to Opt Out
10 Form following the mailing of the Original Notice pursuant to paragraph 26 of this Order fulfills
11 due process requirements and the requirements of Rule 23(c)(2)(B). Any class member who
12 timely submits a validly executed Request to Opt Out Form shall be barred from participating in
13 the Settlement and shall not receive any payment. Any class member who does not timely submit
14 a validly executed Request to Opt Out Form shall be bound by all terms of the Settlement and any
15 Judgment entered in this Litigation if the Settlement is approved by the Court, regardless of
16 whether he or she objected to the Settlement.

17 29. The Court finds that a 90-day period for filing and service of any written objections to the
18 settlement following the initial mailing of the Notice fulfills due process requirements and the
19 requirements of Fed. R. Civ. P. 23(e)(5). Any class member may appear and be heard at the Final
20 Settlement Hearing as to any reason why the proposed Settlement should or should not be
21 approved as fair, reasonable, and adequate, or why judgment should or should not be entered
22 approving such settlement, or why Plaintiffs' Attorneys should not be awarded the requested
23 attorneys' fees and costs, or why the enhancement payments should not be awarded as set forth in
24 the Agreement. However, no Settling Plaintiff shall be entitled to object to the approval of the
25 terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered
26 approving the Settlement, unless that Settling Plaintiff has filed written objections with the Clerk
27 of the United States District Court for the Northern District of California, no later than
28 APRIL 7, 2011 [90 days after the Notice mailing]. Any such written objections also must be

1 served on the following counsel for the Parties postmarked no later than April 7, 2011 [90
 2 days after the Notice mailing]: Steven Pepich, Robbins Geller Rudman & Dowd LLP, 655 West
 3 Broadway, Suite 1900, San Diego, California 92101, and Mark C. Dosker, Squire, Sanders &
 4 Dempsey L.L.P., 275 Battery Street, Suite 2600, San Francisco, CA 94111. Any Settling Plaintiff
 5 who does not make his or her objection in the manner provided shall be deemed to have waived
 6 such objections and shall forever be foreclosed from making any objections to the fairness,
 7 reasonableness, or adequacy of the proposed settlement or to the judgment approving the
 8 settlement.

9 30. In accordance with the foregoing, the Court now adopts the following dates and deadlines
 10 for Notice, the Final Settlement Hearing, and related matters:

Notice Packet mailed to Settling Plaintiffs	<u>January 7</u> , 2011 [30 days after Preliminary Approval]
Proof of Claim/Opt Out/Objection Deadline: Last day for Class Members to submit a Proof of Claim Form, Request to Opt Out Form, or object to the Settlement	<u>April 7</u> , 2011 [90 days after the Notice mailing]
Date by which to file papers in support of final settlement approval and attorneys' fees and costs	<u>April 29</u> , 2011 [35 days before the Final Settlement Hearing]
Final Settlement Hearing	<u>JUNE 3</u> , 2011 at <u>2:30 p.m.</u> [45 days after Proof of Claim/Opt Out/Objection Deadline]

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 20 **RELEASE OF CLAIMS**

21 31. If, at the Final Approval Hearing, this Court grants final approval to the Settlement,
 22 Settling Plaintiffs and every class member who has not submitted a valid and timely Request to
 23 Opt Out Form shall, pursuant to the Settlement, be adjudicated to have granted the release of
 24 claims as set forth in the Settlement, regardless of whether he or she has submitted a Proof of
 25 Claim Form or received any Settlement Payment or objected to the Settlement.

26 32. If, at the Final Approval Hearing, this Court grants final approval to the Settlement,
 27 Defendants shall, pursuant to the Settlement, be adjudicated to have granted the release of claims
 28 against Plaintiffs as set forth in the Settlement.

1 **STATEMENT OF CONTINUING JURISDICTION**

2 33. The Court retains jurisdiction to consider any and all further applications arising out of or
3 connected to the proposed Settlement. If appropriate, the Court may approve the Settlement with
4 such modifications as may be agreed to by the Parties without further notice to the Settling
5 Plaintiffs.

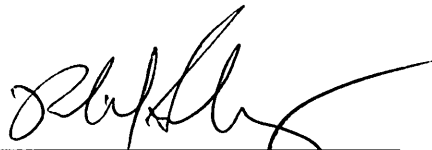
6 **EFFECTIVE DATE IN CONJUNCTION WITH PARALLEL PROCEEDINGS**

7 34. This Order is effective on the later of the date it is issued or the date that Arbitrator Bruce
8 Meyerson issues the order in the *Veliz* Arbitration provisionally certifying class and collective
9 action, granting preliminary approval of class action settlement, approving class notice and
10 manner of distribution, and setting final settlement hearing.

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IT IS SO ORDERED.

Dated: 12/8/, 2010



The Honorable Richard Seeborg
United States District Judge