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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ROBERT RAMIREZ, ROBERT HARRIS,
16 LUIS POCASANGRE CARDOZA, JOSE
17 SALCEDO, A. SHAPPELLE
18 THOMPSON, CORETTA SILVERS
19 (formerly VICK), SANDRA EVANS,
20 BLANCA NELLY AVALOS, JAMES
21 MORGAN and ANTHONY JONES, on
22 behalf of themselves and all others
23 similarly situated,

24 Plaintiffs,

25 EQUAL EMPLOYMENT
26 OPPORTUNITY COMMISSION,

27 Plaintiff/Intervenor.

28 vs.

CINTAS CORPORATION,

Defendant.

CASE NO. C04-0281-JSW

MOTION OF DEFENDANT CINTAS CORPORATION FOR ADMINISTRATIVE RELIEF TO CONSIDER WHETHER CASES SHOULD BE RELATED, PURSUANT TO NORTHERN DISTRICT CIVIL LOCAL RULES 3-12 AND 7-11

[DECLARATION OF JOSEPH W. DENG AND PROPOSED ORDER FILED CONCURRENTLY]

Place: Courtroom 2, 17th Floor
Judge: Hon. Jeffrey S. White

Complaint Filed: January 20, 2004
Trial Date: None Set

LARRY HOUSTON and CLIFTON COOPER, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CINTAS CORPORATION,

Defendant.

SEEKING TO RELATE:
CASE NO. C05-03145-CRB

[COURTESY COPY TO CHAMBERS PURSUANT TO LOCAL RULE 5-1(b)]

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MOTION FOR ADMINISTRATIVE RELIEF

Pursuant to Northern District Civil Local Rules 3-12 and 7-11, Defendant Cintas Corporation (“Cintas”) seeks to have the action entitled *Larry Houston, et al. v. Cintas Corporation*, Case No. C05-03145-CRB (“*Houston*”) related to the instant case entitled *Robert Ramirez, et al. v. Cintas Corporation*, Case No. C04-0281-JSW (“*Ramirez*”) because they both seek certification, *inter alia*, of a class of persons allegedly denied selection to the same jobs based on their protected group status.

I. LEGAL STANDARD

According to the Northern District Civil Local Rules, cases are “related” when:

- (1) The actions concern substantially the same parties, property, transaction or event; and
- (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

N.D. Civ. L. R. 3-12(a).

The parties need not be identical; it is sufficient that there be “similar allegations and underlying facts with respect to [defendants’] conduct.” *Fonovisa, Inc. v. Napster, Inc.*, No. 3:01-CV-02-669, 2002 WL 398676 at *2 (N.D. Cal. Jan. 28, 2002) (setting forth procedure for “[n]ew actions for copyright infringement [which] continue to be filed “against the defendant”). Cases may also be deemed related if, among other things, the “documents and witnesses in the two cases would be ‘largely the same in both [actions]’ and ‘[a]ny efforts to resolve the parties’ dispute must necessarily address both actions together.” *KLA-Tencor Corp. v. The Travelers Indem. Co. of Ill.*, No. C-02-05641 RMW, 2004 WL 1737297, at *2 (N.D. Cal. Aug. 4, 2004) (noting that the parties later agreed that “all discovery in [the first action] could be used in [the other action].”)

II. THE CLAIMS AND ALLEGATIONS IN THE TWO ACTIONS ARE SUBSTANTIALLY SIMILAR

The plaintiffs in the *Houston* action are African American managers, employees and applicants who claim to represent African Americans who allegedly were discriminated

1 against in terms of hiring, pay and promotion into management positions at Cintas. (*Houston*
 2 Compl., ¶¶ 36-45.) The *Houston* plaintiffs challenge the same promotional practices as the
 3 plaintiffs in *Ramirez*, who seek to represent a putative class of Hispanic supervisors who allege,
 4 *inter alia*, denial of transfers and promotions to the same other management jobs at Cintas.¹
 5 (*Ramirez* Compl., ¶¶ 29-32.) The attorneys for plaintiffs in both actions are identical, as are the
 6 attorneys for Cintas in both actions.

7 **A. Three Plaintiffs in the Two Actions Worked at the Same Cintas Facility at the**
 8 **Same Time.**

9 One of the two *Houston* plaintiffs, and two of the *Ramirez* plaintiffs, all worked at
 10 the same Cintas facility in San Leandro, California, during overlapping time periods. In the
 11 *Ramirez* action, Morgan alleges that he worked at the San Leandro location from 1999 to 2004,
 12 and Cardoza worked there in 2003. (*Ramirez* Compl., ¶ 6, 14.) In the *Houston* action, Houston
 13 claims he worked at Cintas' San Leandro facility in 2002 (during the same time as Morgan).
 14 (*Houston* Compl., ¶¶ 17, 23.)

15 **B. Three Plaintiffs Who Worked at the Same Location Have Similar Claims.**

16 The three plaintiffs who worked at the San Leandro facility have similar
 17 allegations of discrimination on the basis of race in terms of pay and promotion. Morgan alleges
 18 he was not "given the duties or compensation" comparable to his position due to his race (African
 19 American). (*Ramirez* Compl., ¶ 14.) Cardoza alleges that Cintas "refused to hire and then
 20 promote" him due to his race and national origin (Hispanic, El Salvador). (*Ramirez* Compl., ¶ 6.)
 21 Houston claims he was discriminated against in terms of "employment opportunities for
 22 management positions," based on his race (African American). (*Houston* Compl., ¶¶ 17, 23.)

23 **C. Plaintiffs in Both Actions Allege the Same Causes of Actions.**

24 In both cases, plaintiffs challenge Cintas' employment practices in a putative
 25 nationwide class action. In both cases, they allege causes of action under 42 U.S.C. § 1981

26 _____
 27 ¹ The plaintiffs in *Ramirez* additionally claim that Cintas discriminated against (a) women,
 28 African Americans and Hispanics in terms of hiring into Service Sale Representative ("SSR")
 positions, and (b) African Americans in terms of SSR route assignments, and non-exempt
 compensation.

1 (“Section 1981”) and 42 U.S.C. § 2000e, *et seq.* (“Title VII”). The *Ramirez* plaintiffs challenge
2 Cintas’ employment practices under the California Fair Employment and Housing Act (“FEHA”),
3 and California Business & Professions Code § 17200, *et seq.* (“Section 17200”). Plaintiffs in
4 *Houston* have stated their intention to add the same state law claims as soon as they have
5 exhausted their administrative remedies. (*Houston* Compl., ¶ 6(b).)

6 **D. Plaintiffs Seek to Certify Overlapping Classes.**

7 Plaintiffs in both actions seek to certify overlapping classes to the extent that
8 African American SSRs who claim they were subjected to alleged discriminatory practices with
9 regard to “route assignments and compensation” (*Ramirez* Compl., ¶ 48(d), 49(c)), also claim
10 they were “denied hire into management positions” at Cintas. (*Houston* Compl., ¶¶ 44(b), 45(b).)

11 **III. DISCOVERY WILL INVOLVE OVERLAPPING WITNESSES, STATISTICAL**
12 **DATA AND EVIDENCE REGARDING EMPLOYMENT PRACTICES, POLICIES**
13 **AND PROCEDURES**

14 **A. Cintas Has Produced a Large Number of Documents and Has Provided**
15 **Extensive Information Relevant to Both Actions.**

16 Cintas has already produced over 20,000 pages of documents in connection with
17 its Federal Rule of Civil Procedure 26 disclosures (the “Initial Disclosures”), and in response to
18 Plaintiffs’ discovery requests. (Declaration of Joseph W. Deng (“Deng Decl.”), ¶ 3.) Cintas’
19 Initial Disclosures in *Ramirez* identify several hundred persons with knowledge of, among other
20 things, Cintas’ employment policies and practices, recruitment and job training programs, and
21 diversity initiatives and efforts. Cintas expects that a large number of documents produced, and
22 witnesses identified, in *Ramirez* will be relevant to the *Houston* action. (*Id.*, ¶ 4.) Absent related
23 cases, Cintas would likely have to produce thousands of pages of documents that are relevant to
24 both actions. (*Id.*) This would be unnecessary and wasteful, and create an unnecessary burden on
25 the parties and the Court.

26 **B. It Would be Unfair to Allow Plaintiffs to Depose the Same Witnesses Twice**
27 **on the Same Issues.**

28 Cintas expects that the witnesses regarding Cintas’ policies and procedures, and

1 the statistical evidence regarding the promotion of Hispanic and African American supervisors
2 and managers to be substantially similar and emanate from the same databases. (Deng Decl.,
3 ¶ 5.) It would be unfair to allow plaintiffs in the two actions to have “two bites at the apple” for
4 the same witnesses on the same policies, practices, procedures, and statistical data.

5 **IV. THERE IS RISK OF INCONSISTENT RULINGS REGARDING ARBITRATION,**
6 **DISCOVERY, CLASS CERTIFICATION AND PROPOSED RELIEF**

7 **A. There is a Risk of Inconsistent Rulings on the Arbitration Agreements.**

8 This Court has already ruled on three Cintas arbitration agreements with respect to
9 plaintiffs Thompson, Salcedo, and Silvers. Cintas intends to move to compel the arbitrations of
10 plaintiff Morgan (in *Ramirez*) and plaintiffs Houston and Cooper (in *Houston*). (Deng Decl., ¶ 6.)
11 This Court is familiar with the Cintas employment agreements, so having the motions on the two
12 *Houston* plaintiffs heard before different judges would create unnecessary duplication of effort,
13 waste judicial resources, and could result in inconsistent rulings.

14 **B. There is a Risk of Inconsistent Rulings on Discovery.**

15 There would be a significant risk of inconsistent discovery rulings since there will
16 be overlapping discovery with respect to witnesses relating to Cintas’ employment practices,
17 statistical proof, and individual decision makers, including overlap with respect to the San
18 Leandro location where plaintiffs in both actions worked.

19 **C. There is a Risk of Inconsistent Rulings on Individualized Relief.**

20 It would be inappropriate for two triers of fact to determine who should have been
21 (or who should be) placed in a given position where an African American manager (in *Houston*)
22 and a Hispanic manager (in *Ramirez*) both claim they should have been (or should be) hired,
23 transferred or promoted into the same position. Such a conflicting result can only be avoided if
24 the cases are related.

25 **D. There Will be a Risk of Inconsistent Results Based on the Same Statistical**
26 **Data and Testimony.**

27 Since a standard approach that plaintiffs take in large, nationwide employment
28 discrimination class actions is to have expert testimony regarding statistical models, Cintas

1 expects many of the expert witnesses on both sides to be identical. (Deng Decl., ¶ 7.) For
2 example, both sides will likely have statistical experts testify regarding the promotional
3 opportunities available, and the persons who received the promotions. The racial/ethnic identity
4 of the available applicant pool, and the person who was promoted to the management positions at
5 issue, will be identical in both the *Houston* and *Ramirez* cases.

6 Another likely major issue on class certification in each of these multi-facility,
7 nationwide class actions will likely be the role of “excessive subjectivity” in promoting
8 Caucasians, Asians or others over African American and Hispanic supervisors and managers to
9 the same positions. (*Ramirez* Compl., ¶¶ 21, 31; *Houston* Compl., ¶¶ 15, 41.) In the absence of
10 related cases, there will be a significant risk of inconsistent results based on the same statistical
11 evidence and expert testimony.

12 **V. DEFENDANT’S GOOD-FAITH ATTEMPT TO RESOLVE MATTER BY**
13 **STIPULATION**

14 Cintas has attempted in good faith to resolve this matter pursuant to Local
15 Rule 7-11(a), and has requested that plaintiffs stipulate to having the *Houston* and *Ramirez*
16 actions related, but they declined. (Deng Decl., ¶ 8.)

17 **VI. RELIEF REQUESTED**

18 For the reasons stated above, Cintas respectfully requests that the Court enter an
19 Order relating the cases pursuant to Local Rule 3-12(f), and assign the *Houston* action to the
20 Honorable Judge Jeffrey S. White for all purposes.

21 DATED: August 26, 2005

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY & WALKER LLP

24 By: _____
ELENA R. BACA

25 Attorneys for Defendant
26 CINTAS CORPORATION

27 LA/1148963.5

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