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**ARBITRATION PROCEEDING BEFORE
AMERICAN ARBITRATION ASSOCIATION**

PAUL VELIZ, et al.,

Claimants,

vs.

CINTAS CORPORATION, et al.,

Respondents.

Case No. 11 160 01323 04

**ORDER CLARIFYING
CLAUSE CONSTRUCTION
AWARD**

On July 27, 2006, the Clause Construction Award and Ruling on Scope of Arbitration (the "Award") was entered in this matter. Thereafter, Claimants filed a Motion for Reconsideration of Clause Construction Award; Respondent filed a Response, and Claimants filed a Reply. Telephonic oral argument was held on the motion on October 10, 2006. Claimants were represented by Altshuler, Berzon, Nussbaum, Rubin & Demain; Traber & Voorhees; and Lerach Coughlin Stoia Geller Rudman & Robbins LLP. Cintas Corp. ("Cintas") was represented by Squire, Sanders & Dempsey, L.L.P.

Although Claimants have requested that I reconsider my Award, I believe that a clarification is necessary, not a reconsideration. Thus, this Order clarifies several aspects of the Award. The doctrine of *functus officio* does not prohibit an arbitrator from clarifying a prior award. *Kyocera Corp. v. Prudential-Bache Trade Serv., Inc.*, 299 F.3d 769, 780 (9th Cir. 2002).

First, based on the discussion during the telephonic oral argument it appears there is a need to clarify the Award with respect to the meaning of Footnote 3. In Footnote 3 I attempted

1 to make it clear that my ruling interpreting the parties' arbitration agreements did not preclude
2 the possibility of a class arbitration (as distinguished from a collective arbitration under the Fair
3 Labor Standards Act). In the Award I found that the place-of-arbitration provision in the
4 arbitration agreements did not permit SSR's to opt in to a collective arbitration that was not in
5 the county where they currently or most recently worked. I did not explain fully in the Award
6 that because a class arbitration, in contrast to a collective arbitration under the Fair Labor
7 Standards Act (the "FLSA"), does not require class members to become a party to another
8 proceeding, there was nothing inconsistent between the place-of-arbitration provision and
9 participation in a class arbitration held in a locale other than the county where an SSR worked.

10 Second, I would like to clarify the reasoning of the Award regarding the issue of a
11 collective arbitration to enable the District Court to understand my thought process as it was
12 based in large part on my interpretation of the District Court's order of May 4, 2005. In that
13 order, the District Court held in part that as "long as a plaintiff can pursue the substantive
14 statutory rights through individual arbitration, a plaintiff's inability to proceed collectively or on
15 behalf of a class is legally irrelevant." Slip op. at 5. A proceeding is scheduled before the
16 District Court shortly where it is anticipated that the parties will seek to affirm and/or vacate my
17 ruling.

18 There is an inconsistency between two provisions of the arbitration agreements. On one
19 hand, the agreements require the arbitrations to be "held" in the county of residence of each SSR.
20 On the other hand, the agreements direct the arbitrator to apply relevant "federal" laws. Of
21 course, these laws include the FLSA which contains a provision permitting employees to become
22 a "party plaintiff" in a collective action, 29 U.S.C. § 216(b), which, of course, may be held in a
23 locale other than where the employee works for Cintas.

24 In its May 4, 2005 Order, the District Court ruled it would not be fundamentally unfair for
25 individual SSR's to be required to arbitrate their claims individually, rather than through a
26 collective action. I interpreted the District Court's statement to mean that the requirement in the
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