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

PAUL VELIZ, et al.,

No. C 03-1180 SBA

Plaintiffs,

ORDER

v.

[Docket No. 151]

Cintas Corporation, et al.,

Defendants.

This matter comes before the Court on the objections of Cintas Corporation (“Cintas”) to certain provisions in Plaintiffs’ Proposed Facilitated Notice and Proposed Order. Having read and considered the parties papers, the Court finds this matter appropriate for disposition with a hearing. The Court hereby SUSTAINS in part and OVERRULES in Part Cintas’ objections. The Court further reminds the parties that even though their documents are electronically filed, they **must** submit a hard copy to Chambers.

I. DISCUSSION

The Court now addresses the Proposed Facilitated Notice, the Proposed Order and Cintas’ objections.

A. Cintas Objections to Plaintiffs’ Proposed Notice

1. Section 11

Section 11 of the Proposed Notice directs prospective plaintiffs to review a website. The Court has not reviewed the content of such a website; it has not even reviewed a request to include it. Because such a website may lead potential plaintiffs to believe that the Court has approved the content, the Court has strong

1 concerns regarding it. Accordingly, Cintas' Objection is SUSTAINED. Section 11 shall be STRICKEN.

2 **2. Section 2**

3 Section 2 of the current Proposed Notice describes the nature of the lawsuit. This description deviates
4 from the Court's November 4, 2003 Order in which it approved Paragraph 2 of Plaintiffs' previous Proposed
5 Notice. Having compared the language between the two, it is apparent that the language was modified because
6 the Court's orders between the previous Proposed Notice and the current one have affected some of the issues
7 discussed in the previous Paragraph 2. For example, the previous Paragraph 2 stated that "The Court has
8 determined that the twenty (20) named plaintiffs" and the "Route Drivers who have filed consent-to-sue forms,
9 and all those who initially opt-in to the case may initially proceed with their federal law (FLSA) overtime claims
10 on a collective action basis." The Court's Order Granting in Part and Denying in part Cintas' Motion to
11 Compel obviously changed this. Moreover, Section 6 of the current Proposed Notice reflects those changes
12 and explains that whether the Route Drivers will be permitted to proceed on a class-action and/or collective
13 basis will be determined by the Court for those Route drivers who are permitted to litigate their overtime claims
14 in court, and by the arbitrator for those who arbitrate their claims before the AAA.

15 Accordingly, Cintas' objection is OVERRULED.

16 **B. Objections to Plaintiffs' Proposed Order**

17 **1. Paragraph 3**

18 Paragraph 3 of the Proposed Order provides that use of the names and addresses of the members of
19 the proposed class "shall be limited to plaintiffs' counsel of record in this action, who may use the information
20 solely for the purpose of providing notice of this action to persons entitled to file Consent to Sue forms...."

21 Cintas objects to this language because it believes that the language permits Plaintiffs to mail as many
22 copies of the notice as they wish, including materials not approved by or submitted to the Court, to a broad
23 spectrum of potential plaintiffs. Cintas is concerned that Plaintiffs will harass addressees with unauthorized
24 communications of unknown content.

25 Plaintiffs counter that they have already voluntarily agreed to use the names and addresses provided
26 only for purposes of proving notice of federal FLSA opt-in rights to those Route Drivers who are eligible to
27 join the lawsuit. Plaintiffs explain that all they wish to accomplish with the language of Paragraph 3 is permission
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1 to follow-up with the Route Drivers who have not responded by sending a second copy of the notice, or a
2 postcard follow-up with a reference to their toll-free number.

3 While the Court is aware that the Proposed Notice is merely a facilitated notice and this matter has not
4 been certified as a class action, it looks to Federal Rule of Civil Procedure 23(c)(2) for guidance. The meaning
5 of Fed.R.Civ.P. 23(c)(2) is "unmistakable." Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 175, 173 (1974).
6 "Individual notice must be sent to all class members whose names and addresses may be ascertained through
7 reasonable effort." Id. Moreover, this requirement includes a constitutional dimension mandating that "the
8 means employed must be such as one desirous of actually informing the absentee might reasonably adopt."
9 Mullane v. New York Trust Co., 339 U.S. 306, 315 (1950). Only then are absent parties given an opportunity
10 to participate in an action that may directly affect their interests. Id. at 314. This procedure includes, but is not
11 limited to, multiple mailings to class members to guard against address errors. Zimmer Paper Products, Inc.
12 v. Berger & Montague, 758 F.2d 86, n. 2 & 3(3d Cir.1985). It also includes employing follow-up procedures
13 to correct wrong addresses and improve low response rates. Zimmer, 758 F.2d at 89. This is especially the
14 case where the potential class consists of individuals who, unlike business entities, are "presumed to be less
15 aware of the notice's legal ramifications." Zimmer at 92.

16 Because the Route Drivers are individuals who are presumed not to be sophisticated regarding legal
17 matters, and because the facilitated notice advises the Route Drivers of an action that may directly affect their
18 interests, the Court finds that Plaintiffs should not be limited to mailing one copy of the Proposed Notice. This
19 does not give Plaintiffs carte blanche to abuse the process. The Court expects that Plaintiffs will send follow-up
20 notices only to those Route Drivers from whom they have not received a response and that Plaintiffs will do
21 so in a manner that will not harass or inundate Route Drivers with unwanted mail.

22 Accordingly, Cintas' objection to Paragraph 3 is OVERRULED. The Court will hold Plaintiffs to their
23 representation that they intend to use the address list merely to send the Proposed Notice to the Route Drivers.
24 If Plaintiffs wish to send other communication that involves notice, such as a postcard referencing a toll-free
25 number, Plaintiffs shall submit it for the Court's approval.

26 2. Paragraph 7

27 Paragraph 7 extends the stipulated tolling period for the FLSA cause of action. Cintas objects to such
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1 an extension because it is a substantive issue that affects Cintas' affirmative defenses. Accordingly, Cintas'
2 objection is SUSTAINED.

3 **3. Paragraph 8**

4 Paragraph 8 provides that Cintas will file a sworn declaration confirming that it complied with the
5 Proposed Order and specifying how it determined which persons were to be included on the mailing list. Such
6 a declaration is unnecessarily burdensome at this stage. Accordingly, Cintas' objection is SUSTAINED.
7 Instead, the parties are directed to choose a time to meet and confer to discuss how Cintas chose which
8 persons were to be included and any objections Plaintiffs have to Cintas' process. If the parties are unable to
9 resolve any issues, Plaintiffs may file a motion with the Court.

10 **II. CONCLUSION**

11 For the foregoing reasons,

12 IT IS HEREBY ORDERED THAT Cintas' objections are SUSTAINED in part and OVERRULED
13 in part. The parties shall comply with the Court's Order regarding the Proposed Notice and the Proposed
14 Order. The Court strongly encourages the parties to continue to cooperate on this matter; it directs them to
15 meet and confer regarding a second revised Proposed Order and Proposed Notice and, if they are able to
16 agree, to submit them to the Court in the form of a stipulated agreement.

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18 IT IS SO ORDERED.

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20 Dated: May 11, 2004

21 /s/ Sandra Brown Armstrong
22 SAUNDRA BROWN ARMSTRONG
23 United States District Judge
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