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PLAN ADMINISTRATOR FOR  
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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

14 PAUL VELIZ, *et al.*, on behalf of  
15 themselves and all others similarly  
situated.

16 Plaintiffs,

17 vs.

18 CINTAS CORPORATION, an Ohio  
corporation; PLAN ADMINISTRATOR  
19 for the Cintas Partners' Plan; and DOES  
20 1-25, inclusive,

21 Defendants.

Case No. C-03-01180 (RS)

[E-FILING]

CLASS ACTION

**CINTAS' NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT  
ON CERTAIN PLAINTIFFS' THIRD  
CLAIMS FOR RELIEF; MEMORANDUM  
IN SUPPORT**

**Date:** November 26, 2008  
**Time:** 9:30 a.m.  
**Courtroom:** 4  
**Judge:** Hon. Richard Seeborg

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**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT on November 26, 2008 at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 4 of the above-entitled Court, located at 280 South 1st Street, Fifth Floor, San Jose, California, Defendant Cintas Corporation (“Cintas”) will and hereby does move the Court for an Order granting the relief sought by this Motion for Summary Judgment.

By this Motion, Cintas seeks an Order pursuant to Fed. R. Civ. P. 56(c) granting (1) summary judgment for Cintas as against 146 Plaintiffs’ Third Claim for Relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* because those Plaintiffs’ claims are barred by the Motor Carrier Act exemption on the specific grounds discussed in this Motion, and (2) partial summary judgment for Cintas as to the claims of every other plaintiff for such periods of time during which they were responsible for delivering uniforms from a ‘location’ – Cintas’ internal term of art for the facilities from which SSRs operated – situated outside the state of any of Cintas’ Rental Distribution Centers. The 146 Plaintiffs against whom this motion is directed are listed on Exhibit 33 to the Declaration of Andrew Chang (“Chang Decl.”) submitted herewith.

This Motion is based upon this Notice of Motion, Motion for Summary Judgment and Memorandum of Points and Authorities, the Request for Judicial Notice, the Declaration of Andrew Chang, the Declaration of Phil Eaton, the Declaration of Brenda Abramovich, and the Declaration of Jason Hill filed herewith, the Reply papers to be submitted in support of this Motion, upon such other or further papers as might be submitted in support of this Motion, upon the record in this action, and upon oral argument to be presented to the Court in support of this Motion at the hearing on this Motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY**

As a matter of law, the FLSA premium pay provisions do not apply to at least 146 individual Plaintiff Service Sales Representatives (“SSRs”) who were responsible for delivering uniforms or direct sale products to their customers that originated from a state other than that in

1 which their particular worksite facility was located. This motion seeks dismissal of claims of  
2 the 146 Plaintiffs to whom the FLSA does not apply as a matter of law because of the “outside  
3 state origination” factor. For those remaining SSR Plaintiffs who did not deliver uniforms or  
4 direct sale products that originated from outside of their particular location’s state, unique  
5 defenses apply to each of their claims precluding class or collective treatment. Cintas will  
6 address the unique defenses that apply to these remaining individual Plaintiffs through later  
7 summary judgment proceedings or at trial.

8 Cintas previously filed a Motion for Summary Judgment on Consolidated Grounds, one  
9 of which grounds was application of one aspect of the Motor Carrier Act exemption (“MCA  
10 exemption”), 49 U.S.C. §13501; 29 C.F.R. §§782.1, 782.2, 782.7.<sup>1</sup> Cintas’ previous motion  
11 related to individual Plaintiffs who admitted they drove across state lines as part of their regular  
12 job duties. Docket No. (“Dkt”) 903. The present Motion for Summary Judgment applies  
13 another dimension of the MCA exemption to at least 146 individual Plaintiffs.<sup>2</sup> This motion  
14 applies the MCA exemption to individual Plaintiffs who delivered uniforms as part of their  
15 regular duties and who worked from a Cintas location situated in a state that was different from  
16 the states where Cintas’ Rental Distribution Centers were located.

17 As explained in detail below, and as illustrated in particular as to six named Plaintiffs,  
18 while SSRs who delivered uniforms had different routes and different customers, one thing they  
19 did have in common is that they were responsible for delivering new uniforms and direct-sale  
20 items as customer needs arose on their routes. For the 146 individual Plaintiffs who are the  
21 subject of this Motion, those new uniforms and direct-sale items all came from out-of-state  
22 Distribution Centers in a continuous stream of interstate commerce for purposes of the MCA  
23 exemption. Accordingly, the 146 Plaintiffs named in this motion all are subject to the MCA  
24 exemption for the full extent of their claims due to this aspect of their job specifically

25 <sup>1</sup> That motion was heard on September 17, 2008.

26 <sup>2</sup> As noted below, the MCA exception addressed in this Motion applies to any other individual  
27 Plaintiff who delivered uniforms or direct-sale products to specific customers where those  
28 uniforms or products originated in a state other than that in which the particular Plaintiff’s  
worksite facility was located. Evidence of the application of this exemption to other individual  
Plaintiffs may be introduced in subsequent motions and/or at trial.

1 applicable to each of them individually. Cintas is also entitled to summary judgment on this  
 2 issue to the extent other Plaintiffs later admit or it is proved that (1) they too delivered or were  
 3 subject to delivering new garments and direct-sale items and, (2) that they too worked from a  
 4 Cintas location in a different state than the Rental Distribution Centers.

## 5 **II. STANDARDS GOVERNING SUMMARY JUDGMENT**

6 Summary judgment is appropriate when no genuine issue of material fact exists and the  
 7 moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp.*  
 8 *v. Catrett*, 477 U.S. 317, 322-23 (1986). Summary judgment must be granted when the moving  
 9 party demonstrates that there are no genuine issues of material fact. *See Horphag v. Research*  
 10 *Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007). An issue is only “genuine” if the evidence is  
 11 such that a reasonable jury could return a verdict for the non-moving party. *See Anderson v.*  
 12 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Rivera v. Philip Morris, Inc.*, 395 F.3d 1142, 1146  
 13 (9th Cir. 2005). An issue is only “material” if its resolution could affect the outcome of the  
 14 action. *Anderson*, 477 U.S. at 248; *Rivera*, 395 F.3d at 1146.

15 It is well-settled that a portion of a cause of action may be disposed of on summary  
 16 adjudication. *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1441 (9th Cir. 1990) (allowing summary  
 17 adjudication on issue of collateral estoppel); *First Nat’l Ins. Co. v. F.D.I.C.*, 977 F. Supp. 1051,  
 18 1055 (S.D.Cal. 1997) (a “Court may still grant summary adjudication as to specific issues if it  
 19 will narrow the issues for trial”); *see also Barker v. Norman*, 651 F.2d 1107, 1123 (5th Cir. 1981)  
 20 (“in cases that involve ... multiple causes of action, summary judgment may be proper as to some  
 21 causes of action but not as to others, or as to some issues but not as to others, or as to some parties  
 22 but not as to others”).

## 23 **III. ARGUMENT**

24 The MCA exemption requires summary judgment as to the 146 Plaintiffs, each of whom  
 25 transported or was subject to transporting goods in interstate commerce. Cintas manufactures,  
 26 sells and rents uniforms and apparel and provides many other business products and services to its  
 27 customers throughout the United States and Canada. The 146 Plaintiffs specifically subject to  
 28 this Motion admitted they were employed by Cintas and were responsible for delivering

1 uniforms. Although these SSRs have different routes and different customers, because many of  
2 the uniforms as well as direct-sale items that the 146 Plaintiffs delivered and were subject to  
3 delivering originated from outside their state, these 146 Plaintiffs are all individually subject to  
4 the MCA exemption. Therefore, Cintas is entitled to summary judgment on the Third Claim for  
5 Relief as to each of them. Other Plaintiffs may have similarly been responsible for delivering  
6 uniforms and direct-sale items originating from outside of their location's state for some or all of  
7 their employment at Cintas, but have not yet so expressly admitted it. As to them, Cintas seeks  
8 partial summary judgment on the issue presented.

9 **A. The MCA Exemption Bars Claims of Drivers Transporting Goods Within a**  
10 **State in the "Practical Continuity of Movement" from Another State.**

11 **1. The MCA Exemption Covers Drivers Who Are Subject to**  
12 **Transporting Goods in Interstate Commerce.**

13 Under the MCA exemption, the overtime requirements of the FLSA do not apply to "any  
14 employee with respect to whom the Secretary of Transportation has power to establish  
15 qualifications and maximum hours of service pursuant to the provisions of section 204 of the  
16 Motor Carrier Act, 1935." 29 U.S.C. § 213(b)(1). The Secretary of Transportation has  
17 jurisdiction, and thus regulatory authority, over employees transporting goods traveling in  
18 interstate commerce where the employees are engaging in activities directly affecting the safety  
19 of motor vehicles. 49 U.S.C. § 13501; 29 C.F.R. § 782.2. Thus, in order to invoke the exemption,  
20 Cintas need only show that:

- 21 (a) it is a "motor private carrier;"
- 22 (b) the plaintiffs were or could have been engaged in activities  
23 that "affect the safe operation of motor vehicles on public  
24 highways";
- 25 (c) the plaintiffs were or could have been called upon to  
26 transport goods in interstate commerce.

27 *See* 49 U.S.C. § 31502; *Foxworthy v. Hiland Dairy Co.*, 997 F.2d 670 (10th Cir. 1993); *Gerard v.*  
28 *Northern Transportation, LLC*, 146 F. Supp. 2d 63 (D. Me. 2001); *see also Klitzke v. Steiner*  
*Corp.*, 110 F.3d 1465, 1467-68 (9th Cir. 1997) (describing the application of the MCA  
exemption). Each of these elements is satisfied here.

1 This Court has already held Cintas has established the first prong of the test – it is a motor  
 2 private carrier. Dkt 121. Similarly, Plaintiffs have not challenged the second prong of the test –  
 3 that they engaged in activities “affecting safety” on a continuing basis. *See* Dkt 925 (Pl.s’ Opp’n  
 4 to Cintas’ Consolidated MSJ). Nor can they. Both the Supreme Court and lower courts have  
 5 ruled that drivers, as a matter of law, affect highway safety. *See e.g., Levinson v. Spector Motor*  
 6 *Serv.*, 330 U.S. 649, 666-68 (1947); *Friedrich v. U.S. Computer Services*, 974 F.2d 409, 417-18  
 7 (3d Cir. 1992) (driving of passenger vehicles is activity that “affected safety”); *Crooker v. Sexton*  
 8 *Motors, Inc.*, 469 F.2d 206, 210-211 (1st Cir. 1972) (“[T]he activities of one who drives [a new or  
 9 used automobile] in interstate commerce, however frequently or infrequently, are not trivial.  
 10 Such activities directly affect the safety of motor vehicle operations.”). It is undisputed that SSRs  
 11 drive as a part of their job duties, delivering Cintas products to the facilities of Cintas customers  
 12 in trucks provided for that purpose by their employer. *See* Chang Decl., Ex. 1, Second Amended  
 13 Complaint (“SAC”) [Dkt 519] at ¶127. Accordingly, as a matter of law, Plaintiffs here are  
 14 engaged in safety-affecting activities.

15 **2. Plaintiffs Transported and Were Subject to Transporting Goods in**  
 16 **Interstate Commerce as a Regular Part of Their Duties.**

17 The final prong of the test, the “interstate commerce” requirement, may be satisfied if, as  
 18 a regular part of his duties: (1) a driver is subject to transporting goods across state lines; or (2) a  
 19 driver is not transporting goods across state lines, but at least some small fraction of the goods the  
 20 driver was “subject to” transporting were in interstate commerce because they were in the  
 21 “practical continuity of movement” from one state to another. *Klitzke v. Steiner*, 110 F.3d 1465,  
 22 1469 (9th Cir 1997); *Bilyou v. Dutchess Beer Distributors, Inc.*, 300 F.3d 217 (2d Cir. 2002); 29  
 23 C.F.R. § 782.2(b)(3); RJN, Ex. 1, DOT Notice of Interpretation, Application of the Federal Motor  
 24 Carrier Safety Regulations (“DOT Interpretation of the MCA”), 46 Fed. Reg. 37,902 (July 23,  
 25 1981).<sup>3</sup> As shown below, the plaintiffs’ duties required them to (and they actually did), transport

26 <sup>3</sup> Throughout this Motion, Cintas cites to rules, regulations, opinions and notices interpreting the  
 27 MCA and the FLSA by the Department of Transportation (“DOT”) and the Department of Labor  
 28 (“DOL”). The DOT and the DOL are the agencies charged with administering the MCA and the  
 FLSA, respectively. *Gerard v. N. Transp. LLC*, 146 F. Supp. 2d 63, 66 (D. Me. 2001). Because  
 the issues raised in this motion involve the interaction between the MCA and FLSA, this Court  
 should defer to the DOT’s and DOL’s reasonable interpretations of their own guidelines and the

1 goods in the “practical continuity of movement” in the flow of interstate commerce, even though  
2 they may have driven solely within a single state.

3 **a. Goods Are Transported in Interstate Commerce So Long As**  
4 **the Out-of-State Shipper Has a Fixed and Persisting Intent that**  
5 **the Goods Move Beyond the In-State Warehouse.**

6 To determine whether goods are in the “practical continuity of movement” in the flow of  
7 interstate commerce, courts examine the essential character of the commerce, as manifested by  
8 whether the out-of-state shipper has a “fixed and persisting” intent, at the time of shipment, that  
9 the goods move beyond the in-state warehouse to which the goods were shipped. *Klitzke*, 110  
10 F.3d at 1469; RJN, Ex. 3, Motor Carrier Interstate Transportation – From Out-of-State Through  
11 Warehouses to Points in Same State (“DOT Policy Statement”), 57 Fed. Reg. 19,812 (May 8,  
12 1992). In other words, goods shipped from Reno, Nevada specifically intended for delivery to an  
13 identified Cintas customer in San Jose, California are considered to be in the flow of interstate  
14 commerce even if the goods stop in a ‘warehouse’ in San Leandro, California. This is because  
15 goods remain in the “practical continuity of movement” in interstate commerce until they reach  
16 their final destination unless there are facts showing there was a break in the continuity. RJN, Ex.  
17 3, DOT Policy Statement, 57 Fed. Reg. 19,812 (listing factors that affect and do not affect  
18 whether the “practical continuity of movement” has been broken). Even if the shipper does not  
19 know the goods’ ultimate destinations, the analysis centers on whether at the time goods are  
20 ordered from the out-of-state shipper, there is a specified final place of delivery other than the in-  
21 state warehouse. The fact that there is a specified, out-of-state, final place of delivery is sufficient  
22 for the last leg of the transportation—the delivery to the ordering company’s customer—to be  
23 covered under the Motor Carrier Act. *Klitzke*, 110 F.3d at 1470; RJN, Ex. 3, DOT Policy  
24 Statement, 57 Fed. Reg. 19,812.

25 In order to find that a shipper did *not* have such a fixed intent at the time of shipping, the  
26 Court must find that **all** of the following three elements are present: (1) at the time of shipment  
27 there is no specific order filled for a specific quantity of a given product to be moved through to a  
28 statutes they administer. *See id.* at 67; *see also Forest Guardians v. U.S. Forest Svc.*, 329 F.3d  
1089, 1098 (9th Cir. 2003).

1 specific destination beyond the terminal storage (i.e., a warehouse); **and** (2) the terminal storage  
 2 is a distribution point or local marketing facility from which specific amounts of the product are  
 3 sold or allocated; **and** (3) transportation in the furtherance of this distribution within the single  
 4 State is specifically arranged only after sale or allocation from storage. DOL Interstate  
 5 Commerce Requirements of [MCA] Exemption, 29 C.F.R. § 782.7(b)(2). Here, Plaintiffs cannot  
 6 even satisfy the first of the three elements required for a finding that the shipper did not have a  
 7 fixed intent for the final point of delivery. As discussed below, each of the 146 Plaintiffs  
 8 delivered products that originated from a Cintas Rental Distribution Center located in a state other  
 9 than the state where his or her worksite facility was located, and the products that each of them  
 10 delivered were ordered for a specific customer, and often even for a specific wearer employed by  
 11 the specific customer. Accordingly, as to these goods that the 146 Plaintiff SSRs delivered and  
 12 were subject to delivering, Cintas had a fixed intent, such that the practical continuity of  
 13 movement is unbroken as a matter of law.

14 **b. Drivers Whose Duties Subject Them to Transporting Even a**  
 15 **Minimal Amount of Interstate Commerce Goods Fall Under the**  
 16 **MCA Exemption.**

17 A driver whose duties subject him to transporting even a minimal amount of goods in  
 18 interstate commerce falls under the MCA exemption. DOL Requirements for [MCA] Exemption  
 19 in General, 29 C.F.R. § 782.2 (a driver is exempt so long as his *bona fide* duties subject him to  
 20 operating in interstate commerce, regardless of proportion of time or activities spent actually  
 21 doing so); RJN, Ex. 1, DOT Interpretation of the MCA, 46 Fed. Reg. 37,902 (“[e]ven a minor  
 22 involvement in interstate commerce as a regular part of an employee’s duties will subject that  
 23 employee to the jurisdiction of the [Federal Highway Safety Administration]”); *Badgett v. Rent-*  
 24 *Way, Inc.*, 350 F. Supp. 2d 642, 654 (W.D. Pa. 2004). Indeed, courts do not even require any  
 25 kind of “percentage of out-of-state goods” litmus test. *See, e.g., Levinson*, 330 U.S. at 674-75 (it  
 26 is the character of the activities, not the proportion, that determines whether an employee is  
 27 subject to DOT jurisdiction); *Badgett*, 350 F. Supp. 2d at 654-55 (in determining application of  
 28 the MCA exemption, “it is the *nature* of the employee’s regular job duties that is most important,  
 not necessarily the *percentage* of the employee’s” involvement in interstate commerce) (emphasis

1 in original). This is especially true of drivers because the very nature of their duties substantially  
 2 impact interstate commerce. *Friedrich*, 974 F.2d at 417 n.10 (“[a] number of courts have held  
 3 that drivers should seldom, if ever, fall within [the] *de minimis* exception<sup>4</sup>”); *see also* Section  
 4 III.A.2.c.(2), *infra* pp. 15-18 (the amount of goods involved is not *de minimis*).

5 Courts and the DOT recognize that the MCA exemption centers on whether there is a  
 6 reasonable expectation that drivers *could have* transported goods in interstate commerce, not that  
 7 they *actually* did so. *Morris v. McComb*, 332 U.S. 422, 433-34 (1947) (MCA exempts drivers  
 8 who were only subject to transporting interstate goods); RJN, Ex. 1, DOT Interpretation of the  
 9 MCA, 46 Fed. Reg. 37,902 (discussing decisions applying DOT jurisdiction to drivers who never  
 10 actually drove in interstate commerce where there was a reasonable likelihood that the drivers  
 11 could have done so “in the regular course of their employment”).

12 The analysis does not change where, as here, drivers are subject to transporting a mixture  
 13 of intrastate and interstate goods. RJN, Ex. 4, DOL Field Operations Handbook § 24c06(a) (“If it  
 14 is known that some portion of a particular load is moving in interstate commerce, whether or not  
 15 this is an identifiable portion of the load, the trip will be viewed as an interstate trip and therefore  
 16 subject to the jurisdiction of the DOT.”). Instead, the Court must focus on whether the *duties* of  
 17 drivers subject them to the requirement of transporting goods in interstate commerce, rather than  
 18 some purported bright-line proportion of interstate goods that was actually transported by the  
 19 drivers. *See, e.g.*, RJN, Ex. 5, Jan. 13, 2006 DOL Opinion Letter (finding that “drivers who  
 20 regularly transport pallets,” only one percent of which were destined for out-of-state suppliers,  
 21 and transport kegs destined for out-of-state suppliers, which kegs constitute only one percent of  
 22 total products transported, “appear easily to fall within DOT’s jurisdiction, which applies for a  
 23 four-month period”); *Guyton v. Schwan Food Co.*, Civil No. 03-5523(DWF/SRN), 2004 U.S.  
 24 Dist. LEXIS 4174 at \* 17-18 (D. Minn. Mar. 16, 2004) (holding managers whose job duties  
 25 required them to drive delivery trucks carrying interstate commerce goods from “time to time”

26 \_\_\_\_\_  
 27 <sup>4</sup> A *de minimis* exception only exists for individuals who handle freight before or after loading  
 28 onto a vehicle because their tasks “may be too ‘trivial, casual or occasional’ to affect safety and  
 bring them under the MCA’s authority.” *Id.*, 974 F.2d at 416-17 (quoting *Pyramid Motor Freight  
 Corp. v. Ispass*, 330 U.S. 695, 708 (1947)).

1 are subject to the MCA exemption, even if they “do not necessarily drive [] delivery trucks every  
2 day or even every week”).

3 **c. Cintas Has Proven That These 146 SSRs Were Subject to**  
4 **Transporting Goods in Interstate Commerce.**

5 The DOT has identified the type of evidence sufficient to establish a driver is subject to  
6 their jurisdiction, which courts have accepted:

7 The [Federal Highway Administration] view is that in order to  
8 establish jurisdiction under [the MCA] the carrier must be shown to  
9 have engaged in interstate commerce within a reasonable period of  
10 time prior to the time at which jurisdiction is in question. The  
11 carrier’s involvement in interstate commerce must be established by  
12 some concrete evidence such as *an actual trip in interstate  
commerce* or proof, in the case of a ‘for hire’ carrier, that interstate  
business had been solicited. If jurisdiction is claimed over a driver  
who has not driven in interstate commerce, evidence must be  
presented that the carrier has engaged in interstate commerce and  
that the driver *could reasonably have been expected to make one of  
the carrier’s interstate runs.*

13 RJN, Ex. 1, DOT Interpretation of the MCA, 46 Fed. Reg. 37,902 (emphasis added); *Badgett*, 350  
14 F. Supp. 2d at 653.

15 A driver is subject to the jurisdiction of the DOT for a four-month period where the  
16 evidence shows (1) a *single delivery* of goods in interstate commerce, or (2) being subject to  
17 making one delivery in interstate commerce. RJN, Ex. 1, DOT Interpretation of the MCA, 46  
18 Fed. Reg. 37,902. The DOL has also accepted this 4-month rule in its Field Operation Handbook.  
19 RJN, Ex. 2, DOL Wage & Hour Field Operations Handbook § 24e01 (actually engaging in or  
20 being subject to engaging in interstate commerce subjects employee to DOT jurisdiction for a 4-  
21 month period); *see also Badgett*, 350 F. Supp. 2d at 657. The once-in-four-months requirement is  
22 a standard set by the DOT, approved by the DOL, to determine whether a driver’s ordinary work  
23 subjects him to operating in interstate commerce, and thus clarifies the “regularly or from time-to-  
24 time” standard for application of the MCA exemption. *See DOL Requirements for [MCA]*  
25 *Exemption in General*, 29 C.F.R. § 782.2(b)(3) (drivers who can be called upon in the ordinary  
26 course of their duties to transport interstate commerce goods “either regularly or from time to  
27 time” fall under the MCA Exemption); RJN, Ex. 1, DOT Interpretation of the MCA, 46 Fed. Reg.  
28 37,902; and RJN, Ex. 2, DOL Handbook § 24e01. Such a clarification by the agencies

1 responsible for administering the two statutes at issue – the FLSA and the MCA – is a reasonable  
 2 interpretation to which courts must defer. *Gerard v. N. Transp. LLC*, 146 F. Supp. 2d 63, 67 (D.  
 3 Me. 2001).

4 As the facts below illustrate, Cintas has more than satisfied its evidentiary burden to show  
 5 that the Plaintiffs were subject to transporting, and did indeed transport, goods in interstate  
 6 commerce during the relevant periods of their employment.

7 **(1) Plaintiffs’ Duties Required Them to Transport Goods in**  
 8 **the Practical Continuity of Movement from an Out-of-**  
 9 **State Shipper to an In-State Customer.**

10 Each week, each Plaintiff was responsible for transporting goods between the Cintas  
 11 facility where he or she was employed and at least dozens of customers. Declaration of Jason  
 12 Hill (“Hill Decl.”), ¶¶ 3-5; Chang Decl., Ex. 1, SAC [Dkt 519] at ¶127, Ex. 32, Deposition  
 13 Transcript of Kelly Smith, Nov. 1, 2007 (“Smith Dep.”), 141:7-23, Ex. 28, Deposition Transcript  
 14 of Dennis Fedor, Nov. 28, 2007 (“Fedor Dep.”), 39:15-40:8, Ex. 27, Deposition Transcript of  
 15 Michael Clayton, Dec. 10, 2007 (“Clayton Dep.”), 32:10-33:15, Ex. 30, Deposition Transcript of  
 16 Wilfredo Huertas, Nov. 13, 2007 (“Huertas Dep.”), 37:18-20, Ex. 29, Deposition Transcript of  
 17 Drew Fuehring, Oct. 30, 2007 (“Fuehring Dep.”), 68:8-11, Ex. 31, Deposition Transcript of  
 18 Daniel Peterson, Nov. 10, 2007 (“Peterson Dep.”), 31:6-10, 36:6-10, 38:22-39:4. Most customers  
 19 were serviced on a weekly basis. Hill Decl., ¶ 4; Chang Decl., Ex. 32, Smith Dep., 70:6-9,  
 20 76:13-22, 141:7-23, Ex. 28, Fedor Dep., 40:6-8, Ex. 27, Clayton Dep., 30:25-31:2, Ex. 29,  
 21 Fuehring Dep., 32:23-33:3.

22 The products transported by Plaintiffs fall into four general categories: (1) uniforms; (2)  
 23 “dust” products, such as mats, aprons, shop towels, mops, and linens; (3) “consumable” products,  
 24 including soap, air fresheners, and paper products (e.g., paper towels and toilet paper); and (4)  
 25 “direct-sale” or “catalog” items. Hill Decl., ¶ 5; Chang Decl., Ex. 32, Smith Dep., 62:7-12, 71:7-  
 26 9, 75:4-6, 75:20-23, 147:11-21, Ex. 28, Fedor Dep., 109:16-112:24; 115:2-17, Ex. 27, Clayton  
 27 Dep., 25:5-27:2, Ex. 30, Huertas Dep., 73:25-75:3, Ex. 29, Fuehring Dep., 33:5-35:9, Ex. 31,  
 28 Peterson Dep., 107:9-22. “Direct-sale” items were products from a Cintas catalog that customers  
 could order either through their SSR or from Cintas directly. Hill Decl., ¶ 14; Chang Decl., Ex.

1 31, Smith Dep., 53:22-54:7, 54:22-55:5, 81:22-82:13, 94:23-95:8, Ex. 28, Fedor Dep., 88:23-  
 2 89:22, Ex. 27, Clayton Dep., 26:5-7, 49:19-50:9, Ex. 30, Huertas Dep., 77:5-80:8, Ex. 29,  
 3 Fuehring Dep., 23:1-19, Ex. 31, Peterson Dep., 110:8-21. Although interstate commerce goods  
 4 were or could have been transported in each of the four categories, only transportation of new  
 5 uniforms and “direct-sale” items in interstate commerce are specifically identified and discussed  
 6 in this Motion.<sup>5</sup>

7 (a) **The 146 Plaintiffs Had a Duty to Transport New**  
 8 **Uniforms in Interstate Commerce.**

9 As SSRs responsible for delivering uniforms to customers, the 146 Plaintiffs had many  
 10 different duties and job experiences, but all were responsible for ensuring that the customers on  
 11 their assigned routes had a supply of clean uniforms leased by that customer for particular  
 12 employees. Hill Decl., ¶ 7. When servicing a customer with uniforms, a Plaintiff would drop off  
 13 clean uniforms for use by the customer’s employees during that week and pick up dirty uniforms  
 14 to transport back to his Cintas location to be laundered. *Id.*; Chang Decl., Ex. 32, Smith Dep.,  
 15 71:10-19, Ex. 28, Fedor Dep., 16:21-17:1, Ex. 27, Clayton Dep., 57:5-21, Ex. 30, Huertas Dep.,  
 16 81:11-16, Ex. 29, Fuehring Dep., 13:7-11, 40:5-15, Ex. 31, Peterson Dep., 26:7-14. To ensure  
 17 that each customer’s employees receive the uniforms to which they are assigned, Cintas affixes to  
 18 the garments an identification tape that, among other things, specifically identifies the customer  
 19 and the customer’s employee to whom that particular uniform is assigned. Chang Decl., Ex. 32,  
 20 Smith Dep., 105:14-106:9, Ex. 28, Fedor Dep., 43:3-11, Ex. 31, Peterson Dep., 61:15-62:6; Hill  
 21 Decl., ¶ 4.

22 For example, if the customer was an auto repair shop, the SSR might deliver once a week  
 23 five sets of clean shirts, pants and coveralls for each individual mechanic employed by the repair  
 24 shop. The garments would each have a separate label affixed to allow Cintas to track and return  
 25 the garment, in addition to whatever individual customer logo and name badges may have been

26 <sup>5</sup> In this Motion, Cintas focuses on the new uniforms and “direct-sale” items that originated from  
 27 Distribution Centers because these items alone are clearly sufficient to satisfy its burden with  
 28 respect to the MCA exemption and are all susceptible to proof through the same method, i.e., by  
 analysis of SSR job duties confirmed in numerous Plaintiff depositions and by data for products  
 shipped from Rental Distribution Centers, as discussed below.

1 affixed at the customer's request. The SSR would pick up the dirty set of garments, return them  
2 to the location for processing and bring them back, cleaned, the following week.

3 Frequently, Plaintiffs also were required as part of their job duties to order and deliver  
4 new uniforms to their customers. Hill Decl., ¶ 8-9; Chang Decl., Ex. 32, Smith Dep., 40:18-45:14,  
5 Ex. 28, Fedor Dep., 24:12-25:13, 40:24-41:24, Ex. 27, Clayton Dep., 57:20-25, 85:2-86:8, Ex. 30,  
6 Huertas Dep., 26:11-27:4, Ex. 29, Fuehring Dep., 46:4-47:7, Ex. 31, Peterson Dep., 60:17-61:14.  
7 Mr. Fedor, for example, admitted he delivered new uniforms to at least one of his customers  
8 every day. Chang Decl., Ex. 28, Fedor Dep., 40:24-41:17. New uniforms are ordered and  
9 delivered for various reasons, but usually because the customer hires a new employee who needs  
10 uniforms, or an existing employee requires a new uniform because, for example, the employee's  
11 size changes or the original uniform has been damaged or lost. Hill Decl., ¶ 7; Chang Decl., Ex.  
12 32, Smith Dep., 40:18-45:14, 85:6-25, Ex. 28, Fedor Dep., 32:7-23, 40:24-41:3, Ex. 27, Clayton  
13 Dep., 57:20-25, 85:2-86:8, Ex. 30, Huertas Dep., 82:4-17, Ex. 29, Fuehring Dep., 46:4-47:7, Ex.  
14 31, Peterson Dep., 60:20-61:14. Given the myriad reasons a new or replacement uniform might  
15 be required, such orders can occur at any time. Chang Decl., Ex. 29, Fuehring Dep., 46:4-12. In  
16 that event, uniform-delivering Plaintiffs were responsible for measuring the employee, if  
17 necessary to obtain the appropriate uniform size, and ordering the new uniform when the Plaintiff  
18 returned to his Cintas facility. *See* Hill Decl., ¶ 9; Chang Decl., Ex. 32, Smith Dep., 42:7-43:7,  
19 85:6-25, Ex. 28, Fedor Dep., 32:7-14, Ex. 27, Clayton Dep., 85:2-5, Ex. 29, Fuehring Dep., 46:4-  
20 16, Ex. 31, Peterson Dep., 60:20-61:14. Plaintiffs have consistently acknowledged that the  
21 ordering of new and replacement uniforms, as part of the servicing of the contracts for their  
22 customers, was one of the necessary duties of their employment. Chang Decl., Ex. 1, SAC [Dkt  
23 519] at ¶127, Ex. 32, Smith Dep., 40:18-45:14, 85:6-25, Ex. 28, Fedor Dep., 24:12-25:10, 32:7-23,  
24 Ex. 27, Clayton Dep., 85:2-5, Ex. 30, Huertas Dep., 93:3-94:24, Ex. 29, Fuehring Dep., 46:4-22,  
25 Ex. 31, Peterson Dep., 62:14-17.

26 When SSRs order uniforms for a customer's new employee or as a replacement, the order  
27 is filled from one or a combination of two sources. First, the individual Cintas location may  
28 maintain an inventory of used uniforms. Hill Decl., ¶ 12; Chang Decl., Ex. 28, Fedor Dep.,

1 72:22-73:8, Ex. 27, Clayton Dep., 85:2-8, Ex. 30, Huertas Dep., 93:3-94:24, Ex. 29, Fuehring  
2 Dep., 47:8-48:7, Ex. 31, Peterson Dep., 63:17-21. If an SSR orders a uniform that happens to  
3 match the quality and size requirements of a uniform already in inventory, the Cintas location will  
4 fill the uniform order, to the extent possible, from its own inventory. Hill Decl., ¶ 12; Chang  
5 Decl., Ex. 28, Fedor Dep., 72:22-73:8, Ex. 27, Clayton Dep., 85:2-8, Ex. 30, Huertas Dep., 93:3-  
6 94:24, Ex. 29, Fuehring Dep., 47:8-12, Ex. 31, Peterson Dep., 63:17-21.

7 But many orders cannot and could not be filled, either entirely or in part, from the  
8 inventory of used uniforms kept at Cintas locations. Hill Decl., ¶ 12; Chang Decl., Ex. 32, Smith  
9 Dep., 45:2-14, Ex., 28, Fedor Dep., 72:22-73:8, Ex. 27, Clayton Dep., 85:2-12, Ex. 30, Huertas  
10 Dep., 93:3-95:5, Ex. 29, Fuehring Dep., 49:16-50:22, Ex. 31, Peterson Dep., 63:17-21. For  
11 example, some customers' contracts required that orders for a new employee or to replace a  
12 uniform for an old employee, be for "new" uniforms and not previously-worn uniforms in nearly  
13 new condition. *See, e.g.*, Chang Decl., Ex. 28, Fedor Dep., 67:7-69:9. Further, it is axiomatic  
14 that locations can not and do not stock all sizes, colors and styles of uniforms. Hill Decl., ¶ 12.

15 When an order cannot be filled from a location's inventory, the location places an order to  
16 one or more of Cintas Rental Distribution Centers in the United States. Declaration of Phil Eaton,  
17 filed concurrently herewith ("Eaton Decl."), ¶¶ 2, 4, 5; Hill Decl., ¶¶ 11-12; Chang Decl., Ex. 32,  
18 Smith Dep., 45:2-14, Ex. 28, Fedor Dep., 72:22-73:8, Ex. 27, Clayton Dep., 85:2-86:1, Ex. 30,  
19 Huertas Dep., 95:6-97:10, Ex. 29, Fuehring Dep., 49:16-50:14, Ex. 31, Peterson Dep., 63:17-21,  
20 82:23-83:24. The order would specify, among other things, the Cintas location where the  
21 uniform was to be shipped, the route number of the SSR ordering the uniform, the reason the  
22 uniform was ordered (e.g., a new employee at the location or a size change for an existing  
23 employee), the specific Cintas-assigned number of the customer for whom the SSR was ordering  
24 the uniform, and would often identify the individual employee for whom the uniform was  
25 intended so that the Distribution Center could affix the identification tape discussed above. Eaton  
26 Decl., ¶ 6. Plaintiffs were responsible for delivering to the specific identified customer for whom  
27 the order was placed the specific new uniforms shipped to their Cintas worksite locations from  
28 the out-of-state Distribution Centers. *See, e.g.*, Chang Decl., Ex. 27, Clayton Dep., 86:5-8, Ex.

1 30, Huertas Dep., 90:18-91:10, 93:3-95:5, Ex. 29, Fuehring Dep., 46:9-47:7; 49:16-50:22, Ex. 31,  
 2 Peterson Dep., 62:14-16; Hill Decl., ¶ 13; Eaton Decl., ¶ 6.

3 All of the uniforms shipped by the Distribution Centers to be delivered by Plaintiffs were  
 4 intended to go to a specific customer and virtually always to a specific customer employee, as  
 5 shown by the fact that orders are made and shipped in response to specific measurements and  
 6 specifications, that the Distribution Centers maintained records identifying for which customer  
 7 the uniforms were to be delivered, and that a substantial percentage of the new uniforms shipped  
 8 by the Distribution Centers were tagged with an identification tape providing information  
 9 identifying the customer employee to wear the uniform, the customer for whom that employee  
 10 worked, and the Cintas location and route assigned to the SSR who serviced that customer.

11 (b) **Plaintiffs Had a Duty to Transport “Direct-Sale”**  
 12 **Goods in Interstate Commerce.**

13 Plaintiffs also have consistently acknowledged they had a duty to sell their customers  
 14 products from the Cintas catalog; this process was called “direct sales”. Chang Decl., Ex. 32,  
 15 Smith Dep., 53:22-54:7, Ex. 28, Fedor Dep., 32:24-33:12, 77:15-78:16, Ex. 27, Clayton Dep.,  
 16 26:5-7, 49:19-50:9, Ex. 30, Huertas Dep., 107:15-108:2, Ex. 29, Fuehring Dep., 23:1-19, 51:13-  
 17 19, 52:20-53:16, 88:22-25, Ex. 31, Peterson Dep., 67:13-68:1; Hill Decl. ¶ 14. When an SSR  
 18 made a “direct sale,” he or the customer would submit an order for that product to be shipped  
 19 from one of the Distribution Centers. Chang Decl., Ex. 32, Smith Dep., 80:22-82:11, Ex. 27,  
 20 Clayton Dep., 26:5-7, 49:19-50:9, Ex. 30, Huertas Dep., 90:18-91:10, Ex. 29, Fuehring Dep.,  
 21 23:1-19, 88:22-89:13, Ex. 31, Peterson Dep., 110:8-21; Eaton Decl., ¶¶ 2, 6; Hill Decl., ¶ 15. The  
 22 order specified whether the product was to be “drop-shipped” directly to the customer, or whether  
 23 the product was to be shipped from the Distribution Center to a Cintas location; if the latter, it  
 24 was the SSR’s duty to transport the direct-sales goods from the location to the customer. Chang  
 25 Decl., Ex. 32, Smith Dep., 82:25-83:6, Ex. 28, Fedor Dep., 88:23-89:19, Ex. 27, Clayton Dep.,  
 26 26:5-7, 49:19-50:9, Ex. 29, Fuehring Dep., 55:2-56:2, 88:22-89:13, Ex. 31, Peterson Dep., 110:8-  
 27 21; Eaton Decl., ¶¶ 3, 6; Hill Decl., ¶¶ 15-16.

(c) **New Uniforms and Direct-Sale Products were in the Practical Continuity of Movement in Interstate Commerce.**

All of the new garments and direct-sale items delivered by the 146 Plaintiffs originated from Cintas Distribution Centers located in states *other* than the states of the Cintas locations where the 146 Plaintiffs were located.<sup>6</sup> Eaton Decl., ¶ 2; Chang Decl., Ex. 33. Thus, there can be no dispute that all products shipped from the Distribution Centers to be delivered by the Plaintiffs, including uniforms and direct sales, were in interstate commerce.

Further, there can be no dispute that the Distribution Centers, as the out-of-state shippers of products, had a “fixed and persistent intent” at the time of shipping for the products to be transported to a specific Cintas customer’s location. When a new garment is ordered to replace a garment being taken out of service, the new garment is ordered in the appropriate size, color, fit and trim for the individual wearer. The order identifies the customer and the delivering SSR’s route. The garment is shipped labeled for the individual customer. Accordingly, there is no doubt that each garment is in the continuous flow of interstate commerce.

During the relevant times, the Distribution Centers maintained databases of the orders they filled, known as COMS and CORE.<sup>7</sup> Eaton Decl., ¶ 3. For each product shipped to fulfill an order, COMS and CORE maintained the following information, among others: (1) the date it was ordered by the Cintas location; (2) the Cintas location number and the route number of the SSR assigned to the customer for whom the product was intended; (3) the unique customer number of the customer for whom the product was intended; (4) the address to which the product was to be shipped; (5) the Distribution Center that shipped the uniform; (6) the carrier that shipped the product to the location and the method used by that carrier; (7) a description of the product; (8) the identity of the specific employee for whom the product was to be assigned (if that information

<sup>6</sup> The Distribution Centers were located in Alabama, Kentucky, Nevada, Pennsylvania, and Ohio for the bulk of the relevant time period. Eaton Decl., ¶ 2. A Distribution Center opened in Texas in June 2008 but none of the 146 plaintiffs was employed in Texas after May 2008. Eaton Decl., ¶ 2; Chang Decl., Ex. 33; Dkt 184; Dkt 334; Dkt 337; Dkt 366.

<sup>7</sup> The COMS database was used from the beginning of 2000 through October 2003. Eaton Decl., ¶ 3. Beginning in January 2003, Cintas began using CORE, a system performing the same functions as COMS. *Id.* Integration of CORE was complete in October 2003. *Id.*

1 was included in the order); and (9) when the order was ready for shipment. *Id.*, ¶¶ 4-9. It was  
 2 Cintas' business practice during this time for those products to be delivered to the customer on  
 3 the next scheduled delivery by the SSR assigned to that customer. Hill Decl. ¶ 16.

4 Thus, the products shipped from an out-of-state Distribution Center were in response to a  
 5 specific order, filled for a specific quantity of a given product to be transported to a specific  
 6 destination (the customer) after interstate transport from the Distribution Center to the Cintas  
 7 location. Further, transportation of the goods, by the Plaintiffs who were responsible for  
 8 delivering those products to their customers, was arranged at the time of ordering. Plaintiffs  
 9 cannot, therefore, satisfy any of the three factors that would be necessary to show that the  
 10 Distribution Centers did not have a "fixed and persistent intent" for the goods to travel to the  
 11 customers at the time they were shipped. 29 C.F.R. § 782.7(b)(2).

12 Cintas anticipates that Plaintiffs will argue, without any factual basis, that the goods  
 13 discussed above – new uniforms and catalog items delivered by SSRs to their customers – are  
 14 somehow *de minimis* and should be disregarded. As discussed above, however, drivers subject to  
 15 transporting goods in interstate commerce seldom, if ever, fall within the *de minimis* exception.  
 16 *Friedrich*, 974 F.2d at 417 n.10. The DOT's burden of proof is consistent with this standard,  
 17 noting that proof of transporting or being subject to transporting goods in interstate commerce  
 18 *once* is sufficient to submit drivers to DOT jurisdiction for a four-month period, thereby placing  
 19 them within the MCA exemption. RJN, Ex. 1, DOT Interpretation of the MCA, 46 Fed. Reg.  
 20 37,902.

21 To factually demonstrate the lack of merit to a *de minimis* argument by Plaintiffs, Cintas  
 22 illustrates the substantial nature of these kinds of transactions through a detailed individualized  
 23 analysis as to the six named Plaintiffs subject to this motion. While this level of evidence is *not*  
 24 required by the applicable law, it is illustrative of the kind of experiences of Cintas SSRs.

25 **(2) The Transportation of Interstate Commerce Goods Was**  
 26 **Substantial and More than *De Minimis*.**

27 For illustrative purposes, Cintas has analyzed data from the COMS database referred to  
 28 above, for the routes assigned to Michael Clayton, Dennis Fedor, Drew Fuehring, Wilfredo

1 Huertas, Jr., Daniel Peterson, and Kelly Smith for the time periods at issue in this lawsuit.<sup>8</sup>  
 2 Chang Decl., ¶¶35-40. For each of these SSRs, Cintas has determined from its COMS database  
 3 how many separate orders for new garments and direct-sale items were placed for the routes to  
 4 which the SSR was then assigned. *Id.*, ¶ 39. For purposes of this Motion, Cintas only included in  
 5 its analysis direct-sale orders that were shipped from out-of-state to the Plaintiffs' locations and  
 6 new garments shipped from out-of-state that were assigned to existing customers rather than new  
 7 accounts. Chang Decl., ¶ 37.

8 As shown below, each of these six illustrative Plaintiffs had substantial numbers of orders  
 9 for many different customers. Each order counted below represents a separately numbered order  
 10 from the COMS database. One order would often involve a much greater quantity of items. For  
 11 example, a single separate order for a new set of uniforms might often consist of 22 items – 11  
 12 shirts and 11 pants. Chang Decl., ¶ 39, Exs. 34-39.

<u>Plaintiff</u>	<u>Time Period</u>	<u>Separate COMS Orders</u>	<u>Customers for Whom Orders Placed</u>
Michael Clayton	2/6/2001-9/7/2001	115	32
Dennis Fedor	2/6/2001-3/20/2002	899	105
Drew Fuehring	5/9/2001-2/8/2003	1150	139
Wilfredo Huertas, Jr.	3/19/2000-9/5/2002	1819	129
Daniel Peterson	1/31/2001-4/19/2002	1050	108
Kelly Smith	3/19/2000-9/14/2001	402	72

21 Chang Decl., ¶ 39.

22 In addition to analyzing the raw number of orders, Cintas also analyzed for the same

23 \_\_\_\_\_  
 24 <sup>8</sup> For any FLSA claims that survive summary judgment in this case, the two-year statute of  
 25 limitations should apply because there is absolutely no evidence of willfulness that could  
 26 somehow give rise to a three-year limitations period. But for purposes of illustrating here the  
 27 substantial frequency of delivering new uniforms and direct sales items from out-of-state  
 28 Distribution Centers during even the longest arguably relevant time period, Cintas has used  
 separate and distinct time periods for each of the six individual Plaintiffs calculated as follows.  
 These individualized periods used for purposes of discussion here consist of the three-year statute  
 of limitations period, plus tolling if applicable to that individual, to define the earliest relevant  
 time as to that individual, and the individual's own employment termination date to define the  
 outer extent of the potentially relevant period. Chang Decl., ¶ 36.

1 period of time the total number of different workdays on which orders were made and shipped.  
 2 Chang Decl., ¶ 40. For example, if Mr. Fedor placed ten different orders on a single day, that  
 3 would count as one workday on which an order was made. *Id.* Depending on how the order was  
 4 processed, multiple orders would sometimes be shipped on the same date and sometimes orders  
 5 would be divided so goods would ship on multiple dates. *Id.* As the chart below illustrates, Mr.  
 6 Clayton had 53 work days on which orders were made for his route and 54 work days on which  
 7 shipments were made. Conversely, Mr. Fedor's route had orders on 257 days and shipments on  
 8 175 days.<sup>9</sup>

<u>Plaintiff</u>	<u>Total Workdays</u>	<u>Days with Separate COMS Orders Placed (% of workdays)</u>	<u>Days with Separate COMS Orders Shipped (% of workdays)</u>
Michael Clayton	91	53 (58.2%)	54 (59.2%)
Dennis Fedor	292	257 (88.0%)	175 (59.9%)
Drew Fuehring	460	345 (75.0%)	351 (76.3%)
Wilfredo Huertas, Jr.	649	531 (81.8%)	522 (80.4%)
Daniel Peterson	317	283 (89.3%)	276 (87.1%)
Kelly Smith	394	174 (44.2%)	167 (42.4%)

18 Chang Decl., ¶ 40.<sup>10</sup>

19 Courts have consistently held that employees fall under the MCA Exemption based on  
 20 evidence of interstate commerce duties and activities far more limited than discussed above. *See,*  
 21 *e.g., Morris*, 332 U.S. at 433-34 (holding group of drivers exempt where actual trips in interstate  
 22 commerce ranged from none to only 97 in a year); *Badgett*, 350 F. Supp. 2d at 647-48, 656-57

23 <sup>9</sup> As this analysis is purely for illustrative purposes, to express the percentage of each plaintiffs'  
 24 workdays on which orders were placed to out-of-state Distribution Centers for their routes, Cintas  
 25 assumed the plaintiffs worked five days per week and did not subtract holidays, vacations, or  
 26 other absences, if any.

27 <sup>10</sup> By analyzing this data with the assumption that the six named Plaintiffs used here for  
 28 illustration purposes worked every possible working day, Cintas is not admitting that those  
 Plaintiffs worked or were entitled to overtime for all of those days. Rather, Cintas is making a  
 conservative assumption solely for purposes of illustrating frequency of ordering and delivering  
 interstate goods that readily meets the MCA test. *See, e.g., Chang Decl.*, Ex. 28, Fedor Dep.,  
 36:20-37:3, Ex. 29, Fuehring Dep., 107:12-24, Ex. 31, Peterson Dep., 84:22-85:11.

1 (rejecting plaintiffs’ *de minimis* claim because “regardless of the number of interstate/intrastate  
2 trips they actually made, at all relevant times, *they could have been called upon in the regular*  
3 *course of their employment to make trips affecting interstate commerce*”) (emphasis in original);  
4 *Guyton*, Civil No. 03-5523(DWF/SRN), 2004 U.S. Dist. LEXIS 4174 at \*2-3, 17-18 (holding  
5 managers who only drove routes containing goods in interstate commerce when training drivers  
6 regularly assigned to those routes or when such a driver was sick or on vacation fall under the  
7 MCA exemption); DOL Requirements for [MCA] Exemption in General, 29 C.F.R. § 782.2  
8 (driver is exempt so long as *bona fide* duties subject him to operating in interstate commerce,  
9 regardless of proportion of time or activities spent actually doing so); RJN, Ex. 1, DOT  
10 Interpretation of the MCA, 46 Fed. Reg. 37,902 (July 23, 1981) (“[e]ven a minor involvement in  
11 interstate commerce as a regular part of an employee’s duties will subject that employee to the  
12 jurisdiction of the [Federal Highway Safety Administration]”).

13 As shown above, at all relevant times during their employment, all uniform-delivering  
14 SSRs’ customers could have required delivery of goods in interstate commerce, either by  
15 requiring new uniforms for any number of reasons, or by ordering a product from a Cintas catalog.  
16 Thus, delivery of such uniforms and goods in interstate commerce was “a natural, integral and . . .  
17 inseparable” part of the duties of those 146 Plaintiffs who have admitted that they were uniform-  
18 delivering SSRs. *McComb*, 332 U.S. at 433; DOL Requirements for [MCA] Exemption in  
19 General, 29 C.F.R. § 782.2.

20 Accordingly, Cintas is entitled to summary judgment against each of the 146 Plaintiffs  
21 and is further entitled to partial summary judgment against each and every other plaintiff to the  
22 extent they later admit or it is proven that for some or all of their relevant employment they, like  
23 the 146 Plaintiffs, were responsible for delivering uniforms and direct-sale items and they were  
24 employed at a location that was not in the same state as a Cintas Rental Distribution Center.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Cintas respectfully requests this Court to grant this motion  
3 for summary judgment.

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Dated: October 22, 2008

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: \_\_\_\_\_ /s/  
Michael W. Kelly

Attorneys for Defendants  
CINTAS CORPORATION and  
PLAN ADMINISTRATOR FOR THE  
CINTAS PARTNERS' PLAN

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**PROOF OF SERVICE**

I, REGINA ARROYO, am employed in the County of San Francisco, State of California.  
I am over the age of 18 and not a party to the within action; my business address is One Maritime Plaza, Third Floor, San Francisco, California 94111-3492.

On October 22, 2008, I served the foregoing document described as:

**CINTAS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON CERTAIN PLAINTIFFS' THIRD CLAIMS FOR RELIEF; MEMORANDUM IN SUPPORT**

Via United States District Court Electronic Filing Service on the parties as set forth below:

Theresa M. Traber  
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Executed on October 22, 2008, at San Francisco, California. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
/s/  
REGINA ARROYO