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17 *Attorneys for Plaintiffs*

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

20 ROBERT RAMIREZ, et al., on behalf of
 21 themselves and all others similarly situated,

22 Plaintiffs,

23 vs.

24 CINTAS CORPORATION,

25 Defendant.

Case Nos. C04-0281-JSW, C05-03145-JSW

**PLAINTIFFS' SUPPLEMENTAL
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 UNOPPOSED MOTION TO APPROVE
 DISMISSAL, WITHOUT PREJUDICE
 AND WITHOUT NOTICE, OF PUTATIVE
 CLASS CLAIMS OF PLAINTIFFS
 ROBERT RAMIREZ, JOSE SALCEDO,
 LARRY HOUSTON, CLIFTON E.
 COOPER, JAMES MORGAN, AND A.
 SHAPPELLE THOMPSON**

26 LARRY HOUSTON, et al., on behalf of
 27 themselves and all others similarly situated,

28 Plaintiffs,

vs.

CINTAS CORPORATION,

Defendant.

Date: April 24, 2009
 Time: 9:00 a.m.
 Dept: Courtroom 11, 19th Floor
 Hon. Jeffrey S. White

62035-3

1 **I. INTRODUCTION**

2 The Court has asked the parties to submit supplemental briefing to explain why putative class
 3 members would not be prejudiced by dismissal of Plaintiff James Morgan's ("Morgan") putative class
 4 claims, given the differences in remedies available under Title VII of the Civil Rights Act of 1964, 42
 5 U.S.C. §§ 2000e, *et seq.* ("Title VII") and the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section
 6 1981"). Plaintiff Morgan alleges that all African American Service Sales Representatives ("SSRs")
 7 were subjected to a systematic assignment and compensation scheme in Cintas' Rental Division that
 8 placed them in lower paying SSR jobs than their white counterparts in violation of Title VII and
 9 Section 1981. He seeks approval of the dismissal of his putative class claims without prejudice, and a
 10 determination that notice to putative class members is not required because the proposed classes have
 11 not been certified and no class members will be bound by or prejudiced by the dismissal of his putative
 12 class claims.

13 If the Court were to dismiss Morgan's putative class claims, putative class members still
 14 interested in pursuing similar claims would be more likely to pursue their claims under Section 1981
 15 than Title VII because at least 31 months would remain on the running of the statute of limitations
 16 under Morgan's Section 1981 claim, in contrast to 10 days remaining under Morgan's Title VII claim.
 17 The Court has asked the parties how the differences in available remedies under the two statutes bear
 18 on whether these putative class members will be prejudiced by this choice. Because Section 1981
 19 provides *superior* remedies to those provided by Title VII, putative class members will not be
 20 prejudiced by proceeding under Section 1981.

21 **II. SECTION 1981 PROVIDES SUPERIOR REMEDIES TO TITLE VII**

22 Both Section 1981 and Title VII prohibit racial discrimination in employment. Specifically,
 23 section 1981 prohibits race discrimination in the "mak[ing] and enforc[ing]" of contracts, which covers
 24 the same substantive aspects of work (including the compensation and assignment claims asserted by
 25 Morgan) that are addressed by Title VII. *See* 42 U.S.C. § 1981 (2000); *Patterson v. McLean Credit*
 26 *Union*, 491 U.S. 164, 176-78 (1989).

27 There are procedural and remedial differences between Title VII and Section 1981, with

1 Section 1981 providing procedural and remedial advantages over Title VII, including a longer statute
 2 of limitations, the absence of any administrative exhaustion requirement, and more generous remedies.
 3 Specifically, Title VII provides for caps on compensatory and punitive damages, combined, at
 4 \$300,000 (42 USC § 1981a(b)(3)(A)-(D)), while compensatory and punitive damages under Section
 5 1981 are not capped. *See* 42 U.S.C. §§ 1981, 1988(b),(c); *see also Johnson v. Ry. Express Agency,*
 6 *Inc.*, 421 US 454, 459–460 (1975).¹

7 In short, in response to the Court's question, the Section 1981 remedies available to a potential
 8 plaintiff who pursued his claim after Morgan's dismissal are *more* generous than those available under
 9 Title VII.

10 III. CONCLUSION

11 For the reasons set forth above, Plaintiffs respectfully request that the Court dismiss, without
 12 prejudice and without notice to putative class members, the putative class claims of Plaintiffs James

13
 14 ¹ There is one limitation under Section 1981 regarding the availability of the disparate impact theory of
 15 proof. Unlike under Title VII, a plaintiff asserting a violation of Section 1981 may not bring a
 16 disparate impact claim. He or she may only assert a disparate treatment claim for intentional or
 17 purposeful discrimination. *See Gen. Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 391
 18 (1982). With respect to remedies, however, the potential Section 1981 plaintiff does not lose anything
 19 as a result because remedies in Title VII disparate impact cases are limited to back pay and front pay.
 20 Whereas, a successful plaintiff in a Section 1981 disparate treatment case may recover back and front
 21 pay as well as uncapped compensatory and punitive damages. *See Kolstad v. Am. Dental Ass'n*, 527
 22 U.S. 526, 547-48 (1999). Thus, even if potential plaintiffs were not be able to assert disparate impact
 23 claims under Title VII after the dismissal of Morgan's putative class claim, they could proceed with
 24 disparate treatment claims under Section 1981, which offers more generous remedies. Additionally,
 25 Cintas has taken the position that the alleged decentralized character of the assignment and
 26 compensation decisions made across hundreds of facilities nationwide precludes reliance on the
 27 disparate impact theory by any plaintiff (including Morgan). While Plaintiffs' counsel disagree, they
 28 recognize that Cintas' strenuous resistance to any nationwide impact theory will impose high risks and
 costs on its pursuit. Moreover, potential individual plaintiffs at issue have evidenced no interest over
 the past five years in identifying themselves as potential claimants, much less participating in the
 lawsuit under any theory. *See Declaration of Heather M. Mills in Support of Unopposed Motion To
 Approve Dismissal, Without Prejudice And Without Notice, of Putative Class Claims of Plaintiffs
 Robert Ramirez, Jose Salcedo, Larry Houston, Clifton E. Cooper, James Morgan, and A. Shappelle
 Thompson* ¶ 8. It is highly unlikely that any such individuals will seek to litigate a *nationwide*
 disparate impact. In addition, a disparate impact claim covering the single Cintas facility where the
 plaintiff was employed would entail virtually identical allegations and proof as would be required for a
 Section 1981 disparate treatment claim, and the Title VII remedies would be far less favorable.

1 Morgan, Larry Houston, Clifton E. Cooper, Jose Salcedo, Robert Ramirez, and A. Shappelle
2 Thompson.

3
4 Dated: April 2, 2009

Respectfully submitted,
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/s/ Heather Mills

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