

United States District Court, N.D. California,
San Francisco Division.

Robert RAMIREZ, Robert Harris, Luis Pocasangre Cardoza, Jose Salcedo, A. Shappelle Thompson, Coretta Silvers (formerly Vick), Sandra Evans, Blanca Nelly Avalos, James Morgan and Anthony Jones, on behalf of themselves and all other persons similarly situated, Plaintiffs,

v.

CINTALS CORPORATION, Defendant.
Equal Employment Opportunity Commission, Plaintiff/Intervenor.
No. C 04-0281 JSW.
November 28, 2005.

Related to Case No. C05-03145JSW

Defendant Cintas Corporation's Answer to Plaintiffs' Fourth Amended Complaint

Judge Hon. [Jeffrey S. White](#).

Defendant Cintas Corporation ("Cintas" or "Defendant"), for itself alone and no other defendant, hereby answers, pleads, and otherwise responds to plaintiffs Robert Ramirez, Robert Harris, Luis Pocasangre Cardoza, Jose Salcedo, A. Shappelle Thompson, Coretta Silvers (formerly Vick), Sandra Evans, Blanca Nelly Avalos, James Morgan and Anthony Jones' ("Plaintiffs") Fourth Amended Complaint ("Fourth Amended Complaint") as follows:

1. Answering Paragraph 1, Cintas admits that Plaintiffs purport to bring an employment discrimination case pursuant to the provisions of the Civil Rights Act of 1866, [42 U.S.C. § 1981](#), as amended by the Civil Rights Act of 1991, Title VII of the Civil Rights Act of 1964, [42 U.S.C. §§ 2000e et seq.](#), as amended, the California Fair Employment and Housing Act, [California Government Code §§ 12940 et seq.](#), and the California Unfair Business Practices Act, [California Business and Professions Code §§ 17200 et seq.](#) Defendant admits that Plaintiffs have made allegations against Defendant regarding employment discrimination on the basis of race, national origin, and sex. Defendant admits that Plaintiffs purport to sue on behalf of themselves and a class of similarly situated African American, Hispanic, and female current and former employees and applicants of Cintas. Defendant admits that Plaintiffs seek various forms of relief, damages, remedies, restitution, costs, expenses, or fees. Except as herein expressly admitted, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.
2. Answering Paragraph 2, Defendant admits that Plaintiffs purport to bring claims subject to this Court's jurisdiction pursuant to [28 U.S.C. §§ 1331, 1343\(a\)\(4\), 1367](#), and [42 U.S.C. § 2000e-5\(f\)\(3\)](#). Except as herein expressly admitted, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.
3. Answering Paragraph 3, Defendant admits that Cintas maintains facilities and business operations in this District, and that it employed Plaintiffs Luis Pocasangre Cardoza ("CARDOZA") and James Morgan ("MORGAN") in this District. Except as herein expressly admitted, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.
4. Answering Paragraph 4, Defendant admits that it employed CARDOZA and MORGAN in its facility in San Leandro, Alameda County, California. Except as herein expressly admitted, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

5. Answering Paragraph 5, Defendant admits that Robert Ramirez, Robin Beasley, Sandra Evans, Robert Harris, Luis Pocasangre Cardoza, Jose Salcedo, A. Shappelle Thompson, Coretta Silvers, Sandra Evans and James Morgan are current or former employees of Cintas. Except as herein expressly admitted, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

6. Answering Paragraph 6, Defendant admits that CARDOZA purports to be a Hispanic male, resident of Oakland, California, and native of El Salvador, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that CARDOZA was employed as an unloader at its San Leandro, California facility in 2003. Defendant admits that CARDOZA's resignation was effective on or about August 6, 2003. Defendant admits that CARDOZA purports to have filed a Charge of Discrimination with the EEOC on or about November 18, 2003, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of this claim, and Defendant denies this claim to the extent that the EEOC Charge attached to the Fourth Amended Complaint is dated September 26, 2003 and stamped "RECEIVED" December 16, 2003. Defendant further admits that the EEOC issued CARDOZA a Right to Sue Notice that is dated June 9, 2004. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

7. Answering Paragraph 7, Defendant admits that Plaintiff Robert Ramirez ("RAMIREZ") purports to be a Hispanic male, a resident of Las Vegas, Nevada, and born in Mexico, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that it employed RAMIREZ as a "Service Sales Representative" and later as a production supervisor from on or about July 6, 1992 until about August 2003. Defendant further admits that RAMIREZ purports to have filed a Charge of Discrimination with the EEOC on November 18, 2003, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of this claim, and, on such basis, Defendant denies this claim. Defendant admits that the EEOC issued RAMIREZ a Notice of Right to Sue that is dated June 7, 2004. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

8. Answering Paragraph 8, Defendant admits that Plaintiff Sandra Evans ("EVANS") purports to be an African American female and a resident of Brookside, Pennsylvania, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that it employed EVANS from on or about March 18, 2002 to the present, in its stockroom at its Aston, Pennsylvania facility. Defendant further admits that EVANS purports to have filed a Charge of Discrimination with the EEOC on or about November 17, 2003, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of this claim, and, on such basis, Defendant denies this claim. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

9. Answering Paragraph 9, Defendant admits that Plaintiff Robert Harris ("HARRIS") purports to be an African American male and resident of Rochester, New York, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that HARRIS was employed as a loader at its Rochester, New York facility, from in or about May 2003 to October 2003. Defendant admits HARRIS was terminated on or about October 9, 2003. Defendant admits that HARRIS purports to have filed a Charge of Discrimination with the EEOC on or about November 18, 2003, but Defendant alleges that it lacks sufficient information to form a belief as to the truth of this claim, and, on such basis, Defendant denies this claim. Defendant further admits that the EEOC issued HARRIS a Notice of Right to Sue that is dated on or about May 21, 2004. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

10. Answering Paragraph 10, Defendant admits that Plaintiff Jose Salcedo ("SALCEDO") purports to be a Hispanic male, resident of Freeport, New York, and native of the Dominican Republic, but Defendant alleges that it

lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that SALCEDO was employed at its Central Islip, New York facility, as a production supervisor, from on or about November 1999 to November 2002. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

11. Answering Paragraph 11, Defendant admits that Plaintiff A. Shappelle Thompson (“THOMPSON”) purports to be an African American male and resident of Rochester, New York, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that it employed THOMPSON as a “driver” (aka Service Sales Representative), at its Rochester, New York facility, from on or about April 2000 to January 2002. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

12. Answering Paragraph 12, Defendant admits that Plaintiff Coretta Silvers (formerly Vick) (“SILVERS”) purports to be an African American female and resident of Raleigh, North Carolina, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that SILVERS was employed in an accounts receivable position, at its Raleigh, North Carolina facility, from on or about September 23, 2002 to on or about February 5, 2003. Defendant admits that SILVERS purports to have filed a Charge of Discrimination with the EEOC on or about January 8, 2004, but Defendant alleges that it lacks sufficient knowledge to form a belief as to the truth of this claim, and, on such basis, denies this claim. Defendant admits that the EEOC issued SILVERS a Notice of Right to Sue that is dated June 28, 2004. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

13. Answering Paragraph 13, Defendant admits that Plaintiff Blanca Nelly Avalos (“AVALOS”) purports to be a Hispanic female, resident of Panorama City, California, and native of Ecuador, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that AVALOS purports to have filed a Charge of Discrimination with the EEOC on or about June 23, 2004, but Defendant alleges that it lacks sufficient knowledge to form a belief as to the truth of this claim, and, on such basis, Defendant denies this claim. Defendant admits that the EEOC issued AVALOS a Notice of Right to Sue that is dated October 26, 2004. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

14. Answering Paragraph 14, Defendant admits that MORGAN purports to be an African American male resident of Hayward, California, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits that MORGAN was employed at its San Leandro, California facility from on or about December 27, 1999 through on or about March 26, 2004. Defendant admits that an SSR's compensation may be determined by, among other things, route volume and Key Performance Indicators (“KPI”) score. Defendant admits that MORGAN purports to have filed a Charge of Discrimination with the EEOC on or about December 29, 2004, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of this claim, and on such basis, denies the claim. Defendant further admits that the EEOC issued MORGAN a Right to Sue Notice that is dated July 15, 2005. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

15. Answering Paragraph 15, Defendant admits that Plaintiff Anthony Jones (“JONES”) purports to be an African American male resident of Camden, Delaware, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of these claims, and, on such basis, Defendant denies these claims. Defendant admits and alleges that Jones was not hired as an SSR at its Dover, Delaware facility. Defendant admits that JONES purports to have filed a Charge of Discrimination with the EEOC on or about May 11, 2005, but Defendant alleges that it lacks sufficient knowledge or information to form a belief as to the truth of this claim, and on such basis, denies the claim. Defendant admits that the EEOC issued JONES a Notice of Right to Sue that is dated June 24, 2005.

Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

16. Answering Paragraph 16, Defendant admits and alleges that it is a corporation with corporate headquarters in Mason, Ohio (near Cincinnati). Defendant further admits and alleges that in its fiscal year 2004 Annual Report, it reported approximately \$2.8 billion in revenue and approximately \$272 million in net income. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

17. Answering Paragraph 17, Defendant admits that its business involves, among other things, renting uniforms, mats, and towels to commercial enterprises. Defendant also admits that some of its production workers, among other things, clean, repair, hang and assemble uniforms and materials to be delivered to customers. Defendant further admits that some of its Service Sales Representatives ("SSRs"), among other things, deliver clean clothing, mats and towels to customers and pick up dirty items from customers. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

18. Answering Paragraph 18, Defendant admits that as of about April 2005, it had more than 27,000 total employees. Defendant admits and alleges that as of about April 2005, it operated approximately 250 Rental Division facilities across the country. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

19. Answering Paragraph 19, Defendant admits and alleges that the positions at its Rental Division facilities vary by facility, but that at some of its Rental Division facilities, it employs individuals in some or all of the following types of positions: various "production," service and sales, office, and human resources positions, among others. These positions include non-supervisory, supervisory, and/or management positions. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

20. Answering Paragraph 20, Defendant admits and alleges that its Board of Directors and Corporate Officers engage in ongoing, general strategic business planning at its corporate headquarters in Mason, Ohio (near Cincinnati). Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

21. Answering Paragraph 21, Defendant admits and alleges that from time to time its managers move from one Rental Division facility to another. Defendant further admits and alleges that it encourages and promotes a corporate culture that values, among other things, humility and respect for its frontline employees, courtesy and enthusiasm, high ethical and moral values, compliance with all laws and regulations, respect for the ethical and moral values of all of its employees, and support of diversity and equal employment opportunity. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

22. Answering Paragraph 22, Defendant denies, generally and specifically, each and every allegation in this paragraph.

23. Answering Paragraph 23, Defendant admits that many of the Directors and Officers identified on page 52 of Cintas's 2004 Annual Report are white males. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every allegation in this paragraph.

24. Answering Paragraph 24, Defendant admits that John Milligan once was a regional vice president. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

25. Answering Paragraph 25, Defendant admits that Al Kocsis currently is a general manager at its Painesville, Ohio facility. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

26. Answering Paragraph 26, Defendant admits Mike Palo currently is the general manager at its Irvington, New Jersey facility. Defendant further admits that Brian Dudley once was a service training coordinator at its Springfield, Missouri facility. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

27. Answering Paragraph 27, Defendant admits that Scott Thomas once was a production supervisor in one of its Michigan facilities. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

28. Answering Paragraph 28, Defendant again admits that Mike Palo currently is the general manager of its Irvington, New Jersey facility. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

29. Answering Paragraph 29, Defendant admits and alleges that the "management and supervisory jobs" at its Rental Division facilities vary by facility, and can (but do not always) include, and are not limited to, the following positions: general manager, branch manager, production manager, service manager, production supervisor, sales manager, and office manager. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

30. Answering Paragraph 30, Defendant denies, generally and specifically, each and every allegation in this paragraph.

31. Answering Paragraph 31, Defendant denies, generally and specifically, each and every allegation in this paragraph.

32. Answering Paragraph 32, Defendant denies, generally and specifically, each and every allegation in this paragraph.

33. Answering Paragraph 33, Defendant admits that Service Sales Representatives ("SSRs") are sometimes referred to as "drivers." Defendant further admits that SSRs, at some of its Rental Division facilities, perform duties including but not limited to delivering clean uniforms, mats, and towels to their customers and picking up dirty items, which they return to the facility for laundering. Defendant admits and alleges that SSRs play an important part in developing good relationships with Cintas's customers, and that their job duties generally include, but are not limited to, selling additional products and services to existing Cintas customers. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

34. Answering Paragraph 34, Defendant denies, generally and specifically, each and every allegation in this paragraph.

35. Answering Paragraph 35, Defendant admits and alleges that its SSR hiring practices are not "uniform" to the extent that these hiring practices vary and/or have varied by individual facility. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

36. Answering Paragraph 36, Defendant denies, generally and specifically, each and every allegation in this paragraph.

37. Answering Paragraph 37, Defendant admits and alleges that as of April 1, 2005, less than 5% of the SSRs in its Rental Division are female. Defendant admits that over 50% of the "production" workers in its Rental Division facilities are female. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

38. Answering Paragraph 38, Defendant admits and alleges that some of its Rental Division facilities employ Assistant SSRs and others whose job duties include assisting SSRs in fulfilling customer needs. These duties may include riding routes, and heavy lifting, among others. Defendant further admits and alleges that as of April 1, 2005, more than 50% of the individuals employed as Assistant SSRs and similar SSR assistant (or "helper") positions were male. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

39. Answering Paragraph 39, Defendant admits and alleges that while SSR hiring practices can vary by facility, the current SSR hiring process generally includes a route ride (sometimes called a "ride along") with a current SSR, or others knowledgeable of the SSR position. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

40. Answering Paragraph 40, Defendant admits and alleges that while SSR hiring practices can vary by facility, the SSR hiring process generally includes a written (or on-line computerized) pre-employment test. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

41. Answering Paragraph 41, Defendant admits and alleges that SSR compensation is based, in part, on route volume and KPI scores. Defendant further admits that some SSR routes may have a higher volume than others, and that SSR routes may vary by, among other things, type of product delivered and location of the customers along the route at any given time. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

42. Answering Paragraph 42, Defendant denies, generally and specifically, each and every allegation in this paragraph.

43. Answering Paragraph 43, Defendant denies, generally and specifically, each and every allegation in this paragraph.

44. Answering Paragraph 44, Defendant admits and alleges that, depending on the location, an SSR who worked as a Certified Route Trainer ("CRT") may have received additional compensation for such work. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

45. Answering Paragraph 45, Defendant denies, generally and specifically, each and every allegation in this paragraph.

46. Answering Paragraph 46, Defendant denies, generally and specifically, each and every allegation in this paragraph.

47. Answering Paragraph 47, Defendant admits that Plaintiffs purport to bring their claims under [Section 1981, Title VII](#), and FEHA as a class action pursuant to [Rules 23\(b\)\(2\) and 23\(b\)\(3\) of the Federal Rules of Civil Procedure](#), on behalf of themselves and others similarly situated. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

48. Answering Paragraph 48, and each subparagraph thereof, Defendant admits that Plaintiffs seek to represent a class of which they allege to be members. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph and subparagraphs thereof.

49. Answering Paragraph 49, and each subparagraph thereof, Defendant admits that CARDOZA, AVALOS and MORGAN seek to represent a subclass of which they allege to be members. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph and subparagraphs thereof.

50. Answering Paragraph 50, Defendant denies, generally and specifically, each and every allegation in this paragraph.

51. Answering Paragraph 51, Defendant admits that African Americans, Hispanics, and women work for Cintas, or are located in communities in different states throughout the country. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

52. Answering Paragraph 52, and each subparagraph thereof, Defendant denies, generally and specifically, each and every allegation in this paragraph and subparagraphs thereof.

53. Answering Paragraph 53, Defendant denies, generally and specifically, each and every allegation in this paragraph.

54. Answering Paragraph 54, Defendant denies, generally and specifically, each and every allegation in this paragraph.

55. Answering Paragraph 55, Defendant denies, generally and specifically, each and every allegation in this paragraph.

56. Answering Paragraph 56, Defendant denies, generally and specifically, each and every allegation in this paragraph.

57. Answering Paragraph 57, Defendant realleges and incorporates by reference its responses to Paragraphs 1 through 56, hereinbefore, as though fully set forth herein.

58. Answering Paragraph 58, Defendant denies, generally and specifically, each and every allegation in this paragraph.

59. Answering Paragraph 59, Defendant denies, generally and specifically, each and every allegation in this paragraph.

60. Answering Paragraph 60, Defendant denies, generally and specifically, each and every allegation in this paragraph.

61. Answering Paragraph 61, Defendant denies, generally and specifically, each and every allegation in this paragraph.

62. Answering Paragraph 62, Defendant admits that Plaintiffs request that the Court award them relief. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this

paragraph.

63. Answering Paragraph 63, Defendant realleges and incorporates by reference its responses to Paragraphs 1 through 62, hereinbefore, as though fully set forth herein.

64. Answering Paragraph 64, Defendant denies, generally and specifically, each and every allegation in this paragraph.

65. Answering Paragraph 65, Defendant denies, generally and specifically, each and every allegation in this paragraph.

66. Answering Paragraph 66, Defendant denies, generally and specifically, each and every allegation in this paragraph.

67. Answering Paragraph 67, Defendant denies, generally and specifically, each and every allegation in this paragraph.

68. Answering Paragraph 68, Defendant denies, generally and specifically, each and every allegation in this paragraph.

69. Answering Paragraph 69, Defendant denies, generally and specifically, each and every allegation in this paragraph.

70. Answering Paragraph 70, Defendant admits that Plaintiffs request that the Court award them relief. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

71. Answering Paragraph 71, Defendant realleges and incorporates by reference its responses to Paragraphs 1 through 70, hereinbefore, as though fully set forth herein.

72. Answering Paragraph 72, Defendant denies, generally and specifically, each and every allegation in this paragraph.

73. Answering Paragraph 73, Defendant denies, generally and specifically, each and every allegation in this paragraph.

74. Answering Paragraph 74, Defendant denies, generally and specifically, each and every allegation in this paragraph.

75. Answering Paragraph 75, Defendant denies, generally and specifically, each and every allegation in this paragraph.

76. Answering Paragraph 76, Defendant admits that Plaintiffs request that the Court award them relief. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

77. Answering Paragraph 77, Defendant realleges and incorporates by reference its responses to Paragraphs 1 through 76, hereinbefore, as though fully set forth herein.

78. Answering Paragraph 78, Defendant admits that [California Business and Professions Code § 17200](#) defines “unfair competition,” in part, as “any unlawful, unfair or fraudulent business act or practice.” Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

79. Answering Paragraph 79, Defendant admits that CARDOZA and MORGAN were employed by Cintas at its San Leandro, California location. Defendant admits and alleges that it received a job application purporting to be signed by AVALOS, for a position as a “Driver” at a Cintas facility located in Van Nuys, California. Defendant also alleges that it lacks sufficient knowledge or information to form a belief as to the truth of Plaintiffs' claim that CARDOZA, AVALOS and MORGAN are residents of California, and, on such basis, Defendant denies this claim. Except as expressly admitted and alleged herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

80. Answering Paragraph 80, Defendant admits that CARDOZA, AVALOS and MORGAN purport to bring this case as a representative action on behalf of themselves and others and seek relief under [California Business and Professions Code §§ 17200](#) *et seq.* Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

81. Answering Paragraph 81, Defendant admits that Plaintiffs request that the Court award them relief. Except as expressly admitted herein, Defendant denies, generally and specifically, each and every remaining allegation in this paragraph.

82. Responding to the Prayer for Relief contained in Paragraphs 82 through 92, and each subparagraph thereof, Defendant denies, generally and specifically, that Plaintiffs, or any of them, or purported class members, or any of them, have been or will be damaged by reason of any act or omission of Defendant or any officer, agent, or employee of Defendant. Defendant denies, generally and specifically, that any act or omission of Defendant or any officer, agent, or employee of Defendant, violated any rights, statutory or otherwise, of Plaintiffs, or any of them, or purported class members, or any of them. Defendant denies, generally and specifically, that the elements of relief sought are available to Plaintiffs on the claims alleged. Defendant denies, generally and specifically, that this case should be expedited. Defendant denies, generally and specifically, that any class or subclass exists or should be certified in this case. Defendant denies, generally and specifically, that declaratory judgment is necessary or appropriate in this case. Defendant denies, generally and specifically, that a preliminary or permanent injunction is necessary or appropriate in this case. Defendant denies, generally and specifically, that monetary relief is necessary or appropriate in this case. Defendant denies, generally and specifically, that Plaintiffs are entitled to an award of costs, expenses and attorneys fees, payable by Defendant. Defendant denies, generally and specifically, that Plaintiffs are entitled to any prejudgment or post judgment interest on any monetary amounts awarded in this action, if any or at all. Defendant denies that the Court should retain any jurisdiction in this case or award any other relief in this matter. Defendant further denies, generally and specifically, each and every remaining allegation in Paragraphs 82 through 92 and subparagraphs thereof.

AFFIRMATIVE AND OTHER DEFENSES

GENERAL DEFENSES

FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient to State a Claim)

83. The Fourth Amended Complaint, and each purported claim contained therein, fails to allege facts sufficient to state a claim upon which relief can be granted.

SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon which Relief Can be Granted)

84. The Fourth Amended Complaint, and each purported claim contained therein, fails to state a claim upon which relief can be granted.

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Venue)

85. Plaintiffs and putative class members who do not work for, did not work for, or did not apply for work with Defendant in the Northern District of California are barred from pursuing their claims in the Northern District of California because they lack venue and should be dismissed under [Rule 12\(b\)\(3\) of the Federal Rules of Civil Procedure](#).

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Legitimate Non-Discriminatory Decisions)

86. The Fourth Amended Complaint, and each purported claim contained therein, is barred in whole or in part because all decisions with respect to Plaintiffs' and putative class members' employment were made by Defendant for legitimate, non-discriminatory, non-pretextual reasons.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Mixed Motive)

87. Defendant did not commit the acts or omissions as alleged in the Fourth Amended Complaint for discriminatory motives, but assuming that it did, such acts or omissions would have been taken in any event for legitimate, non-discriminatory, non-pretextual reasons.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Estoppel)

88. Plaintiffs and putative class members are estopped from pursuing the claims in the Fourth Amended Complaint, and each purported claim contained therein, by reason of the Plaintiffs' and putative class members' own actions and course of conduct.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Waiver)

89. Plaintiffs and putative class members have waived their right, if any, to pursue the claims in the Fourth Amended Complaint, and each purported claim contained therein, by reason of their own actions and course of conduct.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Laches)

90. The Fourth Amended Complaint, and each purported claim contained therein, is barred by the doctrine of laches.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Unclean Hands)

91. The Fourth Amended Complaint, and each purported claim contained therein, is barred by the doctrine of unclean hands.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Reasonable Care)

92. The Fourth Amended Complaint, and each purported claim therein, is barred, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any alleged discriminatory and/or retaliatory behavior.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Take Advantage of Corrective Opportunities)

93. The Fourth Amended Complaint, and each purported claim therein, is barred, in whole or in part, because Plaintiffs and putative class members failed to take advantage of any preventive or corrective opportunities provided by Defendant to avoid harm or otherwise.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Predecessor Liability)

94. To the extent that any of the alleged wrongs were committed by Defendant's predecessor entity or entities, any and all such claims are barred as against Defendant in their entirety.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Third Party Liability)

95. To the extent that any of the alleged wrongs were committed by others, any and all such claims are barred as against Defendant in their entirety.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Advice of Counsel)

96. To the extent that any of the alleged wrongs were committed after Defendant reasonably relied in good faith on the advice of counsel, any and all claims are barred as against Defendant in their entirety.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Subsequent Remedial Measures)

97. The Fourth Amended Complaint, and each purported claim contained therein, is barred to the extent it would impermissibly require for proof the admission into evidence of subsequent remedial measures not admissible to prove culpable conduct in connection with the event under [Federal Rule of Evidence 407](#).

SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Prior Settlement and Release Bars Bringing Suit)

98. To the extent that a named Plaintiff, or any putative class member, has executed a settlement and release with Defendant and received consideration therefor, any and all claims he or she purports to bring against Defendant, including, without limitation, the claims alleged herein, are barred in their entirety.

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Arbitration Agreements Bar Bringing Suit)

99. To the extent that a named Plaintiff, or any putative class member, has agreed to arbitrate any or all of the purported claims asserted in the Fourth Amended Complaint, the Fourth Amended Complaint violates such agreements to arbitrate and the Fourth Amended Complaint should be dismissed and/or stayed and such Plaintiffs, and/or such putative class members, should be compelled to arbitrate.

EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(SALCEDO, THOMPSON and SILVERS'S Claims Stayed Pending Arbitration)

100. The claims of SALCEDO, THOMPSON and SILVERS are stayed pending arbitration, pursuant to the Court's Order Granting in Part and Denying in Part Motion of Defendant Cintas Corporation to (A) Dismiss Claims of Plaintiffs Salcedo, Thompson, Silvers, and Severson, or in the Alternative, (B) Stay their Claims and Compel Arbitration, dated March 22, 2005, and SALCEDO, THOMPSON and SILVERS cannot serve as class representatives.

NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(MORGAN'S Claims Stayed Pending Arbitration)

101. The claims of MORGAN are stayed pending arbitration, pursuant to the Court's Order Granting in Part and Denying in Part Motion of Defendant Cintas Corporation to Dismiss Claims of Plaintiff James Morgan or, in the Alternative, Stay His Claims and Compel Arbitration, dated November 2, 2005, and MORGAN cannot serve as a class representative.

[42 U.S.C. § 1981](#)

TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Statute of Limitations - [42 U.S.C. § 1981](#))

102. Plaintiffs' and putative class members' claims under [42 U.S.C. § 1981](#) are barred in whole or in part by all applicable statutes of limitation, including but not limited to [28 U.S.C. § 1658](#).

TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(California Statute of Limitations - One Year for Personal Injury)

103. Plaintiffs' and putative class members' claims under [42 U.S.C. § 1981](#) are barred in whole or in part by all applicable statutes of limitation, including but not limited to former [California Code of Civil Procedure § 340\(3\)](#).

TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(California Statute of Limitations - Two Years for Personal Injury)

104. Plaintiffs' and putative class members' claims under [42 U.S.C. § 1981](#) are barred in whole or in part by all applicable statutes of limitation, including but not limited to [California Code of Civil Procedure § 335.1](#).

TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(California Statute of Limitations - Four Year Residual)

105. Plaintiffs' and putative class members' claims under [42 U.S.C. § 1981](#) are barred in whole or in part by all applicable statutes of limitation, including but not limited to [California Code of Civil Procedure § 343](#).

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Applicable State Statute of Limitations - California Borrowing Statute)

106. All of plaintiffs' and putative class members' purported [42 U.S.C. § 1981](#) claims that arose in a state other than California are barred in whole or in part by all applicable statutes of limitations, including but not limited to, the applicable state's personal injury statute of limitations, pursuant to [California Code of Civil Procedure § 361](#).

TITLE VII

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Exhaust Federal Administrative Remedies)

107. Plaintiffs' and putative class members' [Title VII](#) claims are barred because Plaintiffs and the putative class members failed, in whole or in part, to exhaust all available administrative remedies, and/or otherwise failed to comply with the statutory prerequisites to the bringing of this action, pursuant to [Title VII](#) of the Civil Rights Act of 1964. [42 U.S.C. §§ 2000e et seq.](#)

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Untimely EEOC Charges)

108. To the extent that Plaintiffs and putative class members make allegations or claims under [Title VII](#) with respect to a time period more than 300 days before Plaintiffs and putative class members allegedly filed a charge with the Equal Employment Opportunity Commission (“EEOC”), or which were not made the subject of a timely EEOC charge, such allegations or claims are barred. [42 U.S.C. §§ 2000e-5\(c\)-\(e\)](#).

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to File Timely Civil Action on [Title VII](#) Claims)

109. To the extent that Plaintiffs and putative class members make allegations or claims under [Title VII](#), and failed to file a civil action within ninety (90) days after receiving notice of a right to sue from the EEOC, such allegations or claims are barred. [42 U.S.C. §§ 2000e-5\(f\)](#).

TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

([Title VII](#) Claims Outside the Scope of Administrative Charges)

110. Plaintiffs' and putative class members' [Title VII](#) claims are barred to the extent that the allegations contained therein do not reasonably fall within the scope of claims made in any administrative charge timely filed by any Plaintiffs or putative class members, or each or any of them, with the EEOC.

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Attempt to Resolve [Title VII](#) Claims)

111. Some or all of Plaintiffs' and putative class members' [Title VII](#) claims are barred due to the EEOC's failure to endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation or persuasion, as required by [42 U.S.C. § 2000e-5\(b\)](#).

THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Venue - Special Venue Provisions of [Title VII](#))

112. Plaintiffs and putative class members who do not work for, did not work for, or did not apply for work with Defendant in the Northern District of California are barred from pursuing their [Title VII](#) claims in the Northern District of California because they cannot satisfy the special venue requirements of [42 U.S.C. § 2000e-5\(f\)\(3\)](#).

THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Practices Consistent with Business Necessity)

113. Insofar as any of Defendant's hiring, assignment, transfer, compensation or promotion policies, or any other employment policy or procedure utilized by Defendant, has had a statistically adverse impact on females, African Americans, or Hispanics, such policies or practices nevertheless are lawful because they are job-related and consistent with business necessity. [42 U.S.C. §§ 2000e et seq.](#)

THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Differential Treatment Based on *Bona Fide* Factors)

114. Plaintiffs' and putative class members' [Title VII](#) claims are barred because any alleged differential treatment of Plaintiffs and putative class members by Defendant was undertaken pursuant to a *bonafide* merit system, *bonafide* seniority system, or *bonafide* factors other than gender, race or national origin. [42 U.S.C. § 2000e-2\(h\)](#).

FEHA

THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Exhaust State Administrative Remedies)

115. Plaintiffs' and putative class members' claims arising under the California Fair Employment and Housing Act ("FEHA") are barred, in whole or in part, because Plaintiffs and putative class members did not exhaust the administrative remedies as required and/or otherwise failed to comply with all the statutory prerequisites to bring suit pursuant to the FEHA. [CAL. GOV'T CODE §§ 12900 et seq.](#)

THIRTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Untimely DFEH Charges)

116. To the extent that Plaintiffs or putative class members make allegations or claims arising under the FEHA with respect to a time period more than one (1) year before the Plaintiffs and putative class members allegedly filed a complaint with the California Department of Fair Employment and Housing ("DFEH"), or which were not made the subject of a timely DFEH complaint, such allegations or claims are barred. [CAL. GOV'T CODE § 12960\(d\)](#).

THIRTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to File Timely Civil Action on FEHA Claims)

117. To the extent that Plaintiffs and putative class members make allegations or claims under the FEHA, and failed to file a civil action within one (1) year after receiving notice of a right to sue from the DFEH, such allegations or claims are barred. [CAL. GOV't Code § 12965\(b\)](#).

THIRTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Claims Outside the Scope of DFEH Charges)

118. Plaintiffs' and putative class members' claims arising under the FEHA are barred to the extent that the allegations therein do not reasonably fall within the scope of any claims made in any administrative complaints filed by Plaintiffs and putative class members, or each or any of them, with the DFEH.

THIRTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Attempt to Resolve FEHA Claims)

119. Some or all of Plaintiffs' and putative class members' FEHA claims are barred due to the DFEH's failure to

endeavor to eliminate the alleged unlawful employment practice complained of by conference, conciliation or persuasion, as required by [California Government Code § 12963.7\(a\)](#).

THIRTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Practices Consistent with Business Necessity)

120. Insofar as any of Defendant's hiring, assignment, transfer, compensation or promotion policies, or any other employment policy or procedure utilized by Defendant, has had a statistically adverse impact on females, African-Americans, or Hispanics, such policies or practices nevertheless are lawful because they are job-related and consistent with business necessity. [CAL. Code REGS. tit. 2, §§ 7286.7\(b\) & \(c\), 7287.4\(e\)](#).

CAL. BUS. & PROF. CODE § 17200

THIRTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Statute of Limitations - [CAL. BUS. & PROF. CODE § 17200](#))

121. Plaintiffs' and putative class members' purported cause of action under [California Business and Professions Code § 17200](#) is barred in whole or in part by all applicable statutes of limitation, including but not limited to [California Business and Professions Code § 17208](#).

FORTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Plaintiffs Lack Standing Under [Section 17200](#) - Private Litigants)

122. Plaintiffs and putative class members, as private litigants, lack standing to bring a claim for relief for damages under [California Business and Professions Code § 17203](#).

FORTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Plaintiffs Lack Standing Under [Section 17200](#) - No Injury In Fact)

123. Plaintiffs and putative class members lack standing to bring a claim for relief under [California Business and Professions Code § 17204](#) because they have not suffered an actual injury or lost money or property as a result of the challenged business practice(s).

FORTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Barred as Class Action Prerequisites Are Not Met)

124. Plaintiffs' and putative class members' purported cause of action under [California Business and Professions Code § 17200](#) is barred because Plaintiffs cannot satisfy the prerequisites for class certification and, therefore, cannot represent the interests of others.

FORTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Limited to Restitution and Injunctive Relief)

125. Plaintiffs' and putative class members' purported cause of action under [California Business and Professions Code § 17200](#) is barred because the remedy for such actions is limited to restitution and injunctive relief.

FORTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutional - Due Process)

126. [California Business and Professions Code §§ 17200](#) *et seq.*, violate the California Constitution and/or United States Constitution in that, among other things, they deny and impinge upon procedural and substantive due process rights.

FORTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutional - Equal Protection)

127. [California Business and Professions Code §§ 17200](#) *et seq.*, violate the California Constitution and/or United States Constitution in that, among other things, they are violative of equal protection.

FORTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutional - Multiple Suits)

128. Plaintiffs' and putative class members' purported cause of action under [California Business and Professions Code §§ 17200](#) *et seq.*, violates Defendant's rights to due process under the California Constitution and/or the United States Constitution to the extent the cause of action does not afford Defendant the protections against multiple suits and duplicative liability ordinarily provided by class actions.

FORTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutionally Vague)

129. Plaintiffs' and putative class members' purported cause of action under [California Business and Professions Code §§ 17200](#) *et seq.*, violates Defendant's rights under the California Constitution and/or the United States Constitution by attempting to enforce [California Business and Professions Code § 17200](#) in a manner that renders the requirements of that statute unconstitutionally vague.

FORTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutional - Freedom of Contract)

130. [California Business and Professions Code §§ 17200](#) *et seq.*, violate the California Constitution and/or the United States Constitution in that, among other things, they are violative of the freedom of contract.

FORTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

([Section 17200](#) Claim Unconstitutional - Interstate Commerce)

131. [California Business and Professions Code §§ 17200 et seq.](#), violate the United States Constitution in that, among other things, they place an undue burden upon interstate commerce.

CLASS ALLEGATIONS

FIFTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Standing)

132. Plaintiffs have failed to satisfy the prerequisites for class certification and, therefore, lack standing and cannot represent the interests of others.

FIFTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Class Conflicts)

133. Class or subclass certification would be inappropriate herein due to conflicts of interest between Plaintiffs and purported class or subclass members, or between and among purported class or subclass members.

FIFTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Satisfy Prerequisites Under [Rule 23](#) - Arbitration Venue)

134. Plaintiffs cannot satisfy the prerequisites under [Federal Rule of Civil Procedure 23](#) (“[Rule 23](#)”) because some or all of the claims of the named Plaintiffs and putative class members are covered by arbitration agreements that require Plaintiffs and putative class members to resolve their disputes with Defendant through arbitration in the county and the state where the Plaintiff or putative class member works or most recently worked for Defendant.

FIFTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Satisfy Prerequisites Under [Rule 23](#) - Collective Bargaining Agreements)

135. Plaintiffs cannot satisfy the prerequisites under [Rule 23](#) because some or all of the claims of the named Plaintiffs and putative class members are governed by the terms of applicable Collective Bargaining Agreements.

RELIEF AND DAMAGES

FIFTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Statutory Damages)

136. Plaintiffs' claims for damages (and certain categories of damages, and the amounts thereof recoverable) are limited by the applicable limit(s) on statutory damages, including but not limited to those limits set forth in [42 U.S.C. § 1981a\(b\)\(3\)](#) for claims under Title VII. See [42 U.S.C. §§ 1981a\(a\)\(1\) and \(b\)\(3\)](#); [42 U.S.C. § 2000e](#).

FIFTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

137. The Fourth Amended Complaint, and each and every purported claim alleged therein, is barred because each Plaintiff and putative class member has failed to mitigate or reasonably attempt to mitigate his or her damages, if any, as required by law.

FIFTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Unjust Enrichment)

138. The Fourth Amended Complaint, and each and every purported claim alleged therein, is barred because any recovery from Defendant would result in a Plaintiff's or a putative class member's unjust enrichment.

FIFTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Workers Compensation Offset)

139. Plaintiffs and putative class members are barred, in whole or in part, from recovery of damages as alleged and prayed for in the Fourth Amended Complaint to the extent that they received any workers' compensation benefits relating to their claims in the Fourth Amended Complaint or, alternatively, any such workers' compensation benefits received by Plaintiffs and/or putative class members should be an offset to any recovery in this action.

FIFTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Legal Remedy Precludes Injunctive and Equitable Relief)

140. Plaintiffs' and putative class members' claims for injunctive and other equitable relief are barred because Plaintiffs and putative class members have an adequate and complete remedy at law.

FIFTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(After-Acquired Evidence Doctrine)

141. Plaintiffs and putative class members may be barred, in whole or in part, from recovery of damages as alleged and prayed for in the Fourth Amended Complaint by the after-acquired evidence doctrine.

SIXTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Intentional Discrimination Precludes Punitive Damages)

142. Defendant alleges that it has not engaged in intentional discrimination with respect to Plaintiffs, and Defendant therefore cannot be liable for punitive damages.

SIXTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Malice, Reckless Indifference or Fraud Precludes Punitive Damages)

143. Defendant alleges that it has not acted with malice, reckless indifference or fraud toward Plaintiffs and putative class members and, therefore, Defendant cannot be liable for punitive damages.

SIXTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Would Constitute Denial of Due Process)

144. Plaintiffs and putative class members are not entitled to recover any punitive or exemplary damages as prayed for in the Fourth Amended Complaint, and any allegations with respect thereto should be stricken, because California's laws regarding the alleged conduct in question in this action are too vague to permit the imposition of punitive damages, and because any award of punitive or exemplary damages under California law in general, and/or any such award under California law as applied to the facts in this case, would violate Defendant's constitutional rights under provisions of the United States and California Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution.

SIXTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Plead Facts Sufficient to Support Punitive Damages)

145. Plaintiffs and putative class members are not entitled to receive punitive damages because Plaintiffs have not pled facts sufficient to support such an award.

SIXTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Good Faith Efforts Preclude Punitive Damages)

146. Plaintiffs and putative class members are not entitled to receive punitive damages because Defendant has made good faith efforts to prevent discrimination in its workplace.

SIXTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Policies Preclude Punitive Damages)

147. Plaintiffs and putative class members are barred from recovering punitive damages because Defendant had in place a policy to prevent discrimination and retaliation in its workplace and made good faith efforts to implement and enforce that policy.

SIXTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Precluded - Individual Decisionmakers)

148. Plaintiffs and putative class members are not entitled to receive punitive damages because, even if they were able to establish that any individual manager allowed unlawful bias to affect any employment decision, which Defendant expressly denies, Defendant, in light of its good faith efforts to prevent bias, is not liable for punitive damages based on any such individual decision.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs and putative class members take nothing by reason of Plaintiffs' Fourth Amended Complaint, that

the Fourth Amended Complaint be dismissed in its entirety with prejudice, and that judgment be entered for Defendant;

2. That Defendant be awarded its reasonable costs and attorneys' fees; and

3. That Defendant be awarded such other and further relief as the Court deems just and proper.

NANCY L. ABELL

MARK W. ATKINSON

HEATHER A. MORGAN

JOSEPH W. DENG

PAUL, HASTINGS, JANOFSKY & WALKER LLP

NANCY L. ABELL

Attorneys for Defendant

CINTAS CORPORATION

Robert RAMIREZ, Robert Harris, Luis Pocasangre Cardoza, Jose Salcedo, A. Shappelle Thompson, Coretta Sil Vers (formerly Vick), Sandra Evans, Blanca Nelly Avalos, James Morgan and Anthony Jones, on behalf of themselves and all other persons similarly situated, Plaintiffs, v. CINTALS CORPORATION, Defendant. Equal Employment Opportunity Commission, Plaintiff/Intervenor.
2005 WL 3606752 (N.D.Cal.) (Trial Pleading)

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