

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MIRNA E. SERRANO, *et al.*,

Plaintiffs,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff-Intervenor,

v.

CINTAS CORP., an Ohio Corporation,

Defendant.

Consolidated for pre-trial proceedings with:

BLANCA NELLY AVALOS, *et al.*,

Plaintiffs,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff-Intervenor,

v.

CINTAS CORPORATION,

Defendant.

Case No. 04-CV-40132

Honorable Judge Paul V. Gadola

Magistrate Judge Donald A. Scheer

Case No. 06-CV-12311

Honorable Paul V. Gadola

Magistrate Judge Donald A. Scheer

***AVALOS* PLAINTIFFS' FIFTH AMENDED COMPLAINT**

Plaintiffs Blanca Nelly Avalos, Anthony Jones, Dimitri Mack, Sharon Wilborn, Jose Picorelli, Edward Fitch, Bennita Shiffer, Osbaldo Mundo, and Aundre Graham for themselves

and all other persons similarly situated, complain of defendant Cintas Corporation (“Cintas” or the “company”) as follows.

NATURE OF THE CASE

1. This is an employment discrimination case, brought 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 (“§1981”); and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, *et seq.*, as amended by the Civil Rights Act of 1991 (“Title VII”). Plaintiffs allege that defendant Cintas has engaged in a company-wide pattern and practice of employment discrimination, both intentional and systemic, on the basis of race, national origin, and sex, against themselves and a class of similarly-situated African-Americans, Hispanics, and females who were discriminated against in recruitment and hiring as service sales representatives (“SSRs”). Plaintiffs seek declaratory, injunctive, and equitable monetary relief from these practices, as well as relief available under §1981 and Title VII.

2. *Transfer and consolidation.* This lawsuit was originally filed in the Northern District of California, captioned *Ramirez et al., v. Cintas Corporation*, Case No. C04-281-JSW. Plaintiffs alleged that Cintas had engaged in, and was continuing to engage in a company-wide pattern and practice of employment discrimination on the bases of race, national origin, and gender in its hiring, recruitment, promotions, transfers, job assignments, and compensation. The EEOC filed a complaint in intervention on behalf of women who were denied hire and recruitment for SSR positions because of gender. As of August 30, 2005, the four *Ramirez* plaintiffs who alleged discrimination in recruitment and hiring for the SSR position were: (a) Robert Harris (African-American male); (b) Luis Pocasangre Cardoza (a Hispanic male); (c) Blanca Nelly Avalos (Hispanic female); (d) Anthony Jones (African-American male).

Following 2006, when Pocasangre Cardoza and Harris withdrew from the lawsuit and their claims were dismissed, Jones and Avalos continued as named plaintiffs with respect to the recruitment and hiring claims.

3. At the same time, a second class action was pending in the Eastern District of Michigan (*Serrano et al., and Equal Employment Opportunity Commission v. Cintas Corporation*, Case No. 04-CV-40132) alleging gender discrimination in the hiring of SSRs at Cintas. In May 2006, Avalos' and Jones' hiring and recruitment claims were transferred to the Eastern District of Michigan captioned under the title *Avalos v. Cintas*, Case No. 06-CV-12311 and consolidated with *Serrano*, for pretrial purposes.

4. All administrative prerequisites to these claims have been exhausted by: EEOC charges filed by Pocasangre Cardoza and Harris on September 26, 2003 and November 13, 2003 alleging that Cintas was systematically discriminating against minorities in hiring for SSR; Avalos' EEOC charge filed on June 17, 2004 alleging that Cintas was systematically discriminating against Hispanics and women in hiring for SSR; and Jones' charge filed on May 6, 2005 alleging that Cintas was systematically discriminating against African Americans in hiring for SSR; and necessary right to sue notices were issued.

JURISDICTION AND VENUE

5. *Jurisdiction.* This Court has jurisdiction of plaintiffs' §1981 claims pursuant to 28 U.S.C. §§1331, 1343(a)(4), 2201, and 2202. The Court has original jurisdiction of plaintiffs' Title VII claims pursuant to those four provisions as well as §706 of Title VII, 42 U.S.C. §2000e-5(f)(3).

6. *Venue.* Venue is proper in this district pursuant to 28 U.S.C. §1391(c) and 42 U.S.C. §2000e-5(f)(3). Cintas has also waived any venue arguments it might otherwise have to

the Eastern District of Michigan's taking venue under such doctrines as the pendent venue doctrine.

PARTIES

7. Plaintiff Blanca Nelly Avalos is a Hispanic female and a resident of Panorama City, California. She applied for an SSR job in January 2004 at Cintas' Van Nuys, California facility and was denied hire despite her qualifications for the position and the fact that there were vacancies at the time her application was pending.

8. Plaintiff Anthony Jones is an African-American male and a resident of Camden, Delaware. He applied for an SSR job in November 2004 at Cintas' Dover, Delaware facility and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

9. Plaintiff Dimitri Mack is an African-American and a resident of Milwaukee, Wisconsin. He applied for an SSR job in December 2003 at Cintas' Franklin, Wisconsin facility and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

10. Plaintiff Sharon Wilborn is an African-American female and a resident of Canton, Michigan. She applied for an SSR job at Cintas' Macomb, Michigan facility in February 2003 and was denied hire despite her qualifications for the position and the fact that there were vacancies at the time her application was pending.

11. Plaintiff Jose Picorelli is a Hispanic male and a resident of Clermont, Florida. He applied for an SSR job at Cintas' Franklin, Wisconsin facility in November 2002 and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

12. Plaintiff Edward Fitch is an African-American male and a resident of Greenville, South Carolina. He applied for an SSR job at Cintas' Greenville, South Carolina facility in March 2002 and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

13. Plaintiff Bennita Shiffer is an African-American female and a resident of Simpsonville, South Carolina. She applied for an SSR job at Cintas' Greenville, South Carolina facility in December 2002 and was denied hire despite her qualifications for the position and the fact that there were vacancies at the time her application was pending.

14. Plaintiff Osbaldo Mundo is an Hispanic male and a resident of Los Angeles, California. He applied for an SSR job at Cintas' Pico Rivera, California facility in July 2002 and again in the late summer of 2003 and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

15. Plaintiff Aundre Graham is an African American male and a resident of Toledo, Ohio. He applied for an SSR job at Cintas' Perrysburg, Ohio facility in September 2004 and was denied hire despite his qualifications for the position and the fact that there were vacancies at the time his application was pending.

16. Defendant Cintas is a national corporation headquartered in Mason, Ohio, near Cincinnati. Its major business involves renting uniforms, mats, and towels to commercial enterprises. It has more than 34,000 employees and operates more than 400 operations facilities across the country, most of which are in the Rental Division. For fiscal year 2007, Cintas reported more than \$3.7 billion in sales and over \$335 million in profits.

FACTS RELATING TO THE PATTERN OF INTENTIONAL
AND SYSTEMIC DISCRIMINATION BY DEFENDANT CINTAS

17. Defendant Cintas' recruitment and hiring practices and systems discriminate against African-Americans, Hispanics and females, because of their race, national origin and/or sex, who seek employment as SSRs in rental division facilities. The discriminatory practices engaged in by Cintas are intentional and systemic in nature and adversely affect plaintiffs and members of the class with respect to opportunities for hiring as SSRs in its rental division, as specifically summarized below.

18. Upon information and belief, Cintas' upper-level management is comprised almost exclusively of white men. The homogenous racial and gender composition of Cintas' management at the highest levels is reflected in management throughout the facilities in the rental division, which also is predominantly white and male.

19. Cintas has developed and continually reinforces a centralized corporate culture that is implemented at each of its rental division facilities throughout the country. Cintas regularly moves upper-level managers from one rental division facility to another, and often from one state to another. This practice is done, in part, to ensure that a uniform Cintas culture operates consistently throughout all of its rental facilities.

20. SSRs work in the service department at Rental Division facilities. They deliver clean uniforms, mats, and towels to clients and pick up dirty items, which they return to the facility for laundering. SSRs are the key contacts for developing good relationships with Cintas' customers. A critical part of their job duties entails selling additional products and services to existing Cintas customers. SSRs are the highest paid non-supervisory workers in the Rental Division.

21. Cintas does not use objective standards or criteria for making hiring decisions for SSR positions. Instead, Cintas confers discretion on the facility managers who hire SSRS to make SSR hiring decisions based on subjective preferences, frequently based heavily on referrals by incumbent SSRs. These practices have had a disparate impact on African-Americans, Hispanics, and women who have applied for SSR positions.

22. As a result of these practices, African-Americans, Hispanics, and women have been discriminated against in recruitment and hiring for SSR positions in the rental division; and African-Americans, Hispanics, and women are underrepresented in the SSR position. For example, at no point from 1999 through 2003 (i.e., when the plaintiffs' first EEOC charges were filed) did the total percentage of female SSRs exceed five percent at Cintas. The Cintas SSR workforce was 5.5% female in 2004, and 9% and 9.6% female in 2005 and 2006, respectively. The pattern for African American and Hispanic hiring is similar, with increases in the years following the filing of the lawsuit.

23. Plaintiffs Avalos, Jones, Mack, Wilborn, Picorelli, Fitch, Shiffer, Graham and Munoz, and hundreds of other qualified Hispanics, females, and African American applicants like them, were denied SSR jobs despite their qualifications because of their national origin, gender, and race.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring their claims under §1981 for race and national origin discrimination, and under Title VII for race, national origin, and gender discrimination, and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and all others similarly situated, as more specifically described below.

25. Plaintiffs seek to represent the class consisting of:

- (a) women who were denied SSR positions in Cintas' rental division during the limitations period;
- (b) African-Americans who were denied SSR positions in Cintas' rental division during the limitations period; and
- (c) Hispanics who were denied SSR positions in Cintas' rental division during the limitations period.

26. The named plaintiffs as class representatives, and the class as defined above, meet each of the requirements of Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure for certification of this case as a class action, for the reasons stated below.

27. *Rule 23(a)(1) -- numerosity.* It is estimated that there are thousands of African-Americans, thousands of Hispanics, and thousands of women, who have applied unsuccessfully for SSR positions during the limitations period. They are located throughout the nation in hundreds of communities near or around Cintas' more than 200 rental facilities. The class is therefore so numerous as to make individual joinder of class members is impracticable.

28. *Rule 23(a)(2) -- commonality.* There are numerous common questions of fact and law in this action that relate to and affect the claims of relief sought by the class, as well as the anticipated defenses thereto. These common questions include, without limitation, the following:

- (a) whether women, African-Americans, and Hispanics were denied SSR positions in Cintas' rental division during the limitations period because of their gender, race, or national origin;
- (b) whether, over the period covered by this lawsuit, Cintas' delegation to local level managers of unsupervised discretion in the

- hiring of SSRs has provided a ready means for discrimination; and whether this decisionmaking authority has been used to discriminate against African-Americans, Hispanics, and women;
- (c) whether there is a pattern throughout Cintas' rental division of discrimination in hiring for the SSR position against African-Americans and Hispanics, and women;
- (d) whether plaintiffs' statistical analyses show that Cintas' recruitment and hiring practices had an adverse impact on African-Americans, Hispanics, and women, and, if so, whether they were neither job related nor consistent with business necessity;
- (e) what relief is appropriate to remedy the claims of plaintiffs and the class resulting from Cintas' above-described discriminatory employment practices pursuant to Title VII;
- (f) what are the appropriate standards for a grant of equitable relief, both injunctive and in the form of damages that inure to the group benefit, to remedy Cintas' above-described discriminatory employment practices;
- (g) whether Cintas' above-described discriminatory actions are "intentional" within the meaning of authorities applying §1981 and 42 U.S.C. §1981a(a)(1); and
- (h) whether Cintas acted with malice or reckless indifference by the above-described discrimination against plaintiffs and the class in the face of a perceived risk that its actions would violate their

rights such that an award of punitive damages that inure to the group benefit of the class is appropriate; and, if so, how such award should be determined and distributed to members of the class.

29. *Rule 23(a)(3) -- typicality.* The claims of the named plaintiffs, who are representatives of the class, are typical of the claims of the class. The named plaintiffs have been personally affected and discriminated against by the same practices that plaintiffs allege in this complaint have harmed the class as a whole and other class members individually.

30. *Rule 23(a)(4) -- adequacy.* The named plaintiffs will fairly and adequately represent the interests of the class. There is no conflict between any named plaintiff and other members of the class with respect to this action or the claims for relief set forth in this complaint. The attorneys for the plaintiffs are experienced and competent in representation of classes in employment discrimination actions, and they have and will devote adequate staff and other resources to the case.

31. *Rule 23(b)(2) -- case maintainable under this rule.* This action is properly maintained as a class action pursuant to subsection (b)(2) of Rule 23 in that defendant Cintas has acted or refused to act on grounds which are generally applicable to the class, in particular race, national origin, and/or sex, thereby making appropriate injunctive relief and corresponding back pay and punitive damages that inure to the group benefit.

FIRST CAUSE OF ACTION -- VIOLATION OF TITLE VII
(ON BEHALF OF PLAINTIFFS AND MEMBERS OF THE CLASS)

32. Plaintiffs repeat, reallege, and incorporate by reference herein the allegations of ¶¶1-32, inclusive, as though fully set forth herein.

33. Defendant's discrimination against plaintiffs and members of the classes they represent, as alleged herein, is in violation of the rights secured to them by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, *et seq.*, as amended by the Civil Rights Act of 1991.

34. By the conduct described above, defendant intentionally violated the Title VII race, national origin, and gender rights of plaintiffs and members of the classes they represent.

35. Defendant's conduct also has had an adverse impact against plaintiffs and members of the classes they represent, and is neither job related nor consistent with business necessity, and therefore violates their rights under Title VII.

36. In its discriminatory actions as alleged above, Cintas has acted with malice or reckless indifference to the Title VII rights of the above-named African-American, Hispanic, and female plaintiffs and class members they represent, thereby entitling them to an award of punitive damages that inure to the benefit of the class.

SECOND CAUSE OF ACTION -- VIOLATION OF 42 U.S.C. §1981
(ON BEHALF OF AFRICAN-AMERICAN AND HISPANIC
PLAINTIFFS AND MEMBERS OF THE CLASS)

37. Plaintiffs repeat, reallege, and incorporate by this reference the allegations set forth in ¶¶1-37, inclusive, as though fully set forth herein.

38. Defendant Cintas' discrimination against plaintiffs and members of the classes they represent is in violation of the rights of the plaintiffs and the class afforded them by the Civil Rights Act of 1866, 42 U.S.C. §1981, as amended by the Civil Rights Act of 1991.

39. By the conduct described above, defendant intentionally violated the §1981 race, national origin, and gender rights of plaintiffs and members of the classes they represent.

40. In its discriminatory actions as alleged above, Cintas has acted with malice or reckless indifference to the rights of the Hispanic and African-American plaintiffs and class

members, thereby entitling them to an award of punitive damages that inure to the benefit of the class.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court grant relief on their first and second causes of action as specified below.

- (1) Plaintiffs pray that the Court certify a class under Rule 23(b)(2) defined as:
 - (a) women who were denied hiring to SSR positions in Cintas' rental division during the limitations period;
 - (b) African-Americans who were denied hiring to SSR positions in Cintas' rental division during the limitations period; and
 - (c) Hispanics who were denied hiring to SSR positions in Cintas' rental division during the limitations period;
- (2) plaintiffs pray that the Court issue a declaratory judgment against defendant Cintas finding that Cintas' rental division has violated the rights of plaintiffs and the class under §1981 and Title VII, by denying and depriving them of equal employment opportunities on the basis of race, national origin, and/or sex, as alleged in this complaint;
- (3) plaintiffs pray that the Court issue a preliminary and permanent injunction pursuant to §1981 and Title VII, enjoining defendant Cintas, its officers, agents, employees, and all others acting for or succeeding Cintas, from engaging in the discriminatory employment practices alleged in this

complaint that discriminate against plaintiffs or the class on the basis of race, national origin, and/or sex in violation of §1981 and/or Title VII;

- (4) plaintiffs pray that the Court enter a preliminary and permanent injunction ordering and requiring that defendant Cintas formulate, institute, adopt, and maintain policies and practices which will provide equal employment opportunities to plaintiffs, the class, and future African-American, Hispanic, and female applicants for employment to SSR positions, and which will to the extent practicable remedy the continuing effects of past discrimination against plaintiffs and the class, and restore them to the employment status and position they would have held and enjoyed but for the unlawful discrimination complained of herein;
- (5) plaintiffs pray that the Court order defendant to pay equitable monetary relief and punitive damages that inure to the group benefit to plaintiffs and members of the class on whose behalf claims are asserted under §1981 and Title VII, in an amount to be proved at trial;
- (6) plaintiffs pray that the Court award them their costs, expenses, and attorneys' fees, payable by defendant Cintas by determining that plaintiffs are prevailing parties, and thereupon awarding plaintiffs their reasonable costs, expenses, and attorneys' fees incurred in bringing this action, pursuant to 42 U.S.C. §1988 on the first cause of action, and §1988 and 42 U.S.C. §2000e-5(k) on the second cause of action;

- (7) plaintiffs pray that the Court order Cintas to pay pre- and post-judgment interest on all monetary amounts awarded in this action, as provided by law;
- (8) plaintiffs pray that the Court retain jurisdiction of this case for a sufficient period of time to ensure that defendant Cintas has fully complied with the preliminary and permanent injunctions requested herein and has remedied to the greatest extent practicable the discriminatory policies and practices complained of herein, and that Cintas is operating in full compliance with the requirements of §1981 and Title VII with regard to its employment policies and practices; and
- (9) plaintiffs pray that the Court award such other and further relief as this Court deems equitable and just.

DEMAND FOR JURY TRIAL

On behalf of themselves and the class alleged herein, plaintiffs demand trial by jury on all claims stated in this complaint on which they are entitled to a jury trial.

Dated this 17th day of January, 2008.

Respectfully submitted,

s/ Sarah E. Siskind
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