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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

LUIS ZAMBRANO, individually, and on
 behalf of other aggrieved employees

Plaintiff,

vs.

CINTAS CORPORATE SERVICES, INC.,
 an Ohio corporation; CINTAS
 CORPORATION NO. 2, a Nevada
 corporation; CINTAS CORPORATION NO.
 3, a Nevada corporation; and DOES 1-50,
 Inclusive.

Defendants.

Case Number:

**COMPLAINT FOR CIVIL PENALTIES FOR
 VIOLATIONS OF THE CALIFORNIA
 LABOR CODE UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT OF 2004
 ("PAGA")**

[Cal. Labor Code. Section 2698, *et seq.*]

Plaintiff Luis Zambrano ("Plaintiff"), individually, and on behalf of other aggrieved
 employees, alleges as follows:

INTRODUCTION

1. Plaintiff brings this action against Defendants Cintas Corporate Services, Inc.,
 Cintas Corporation No. 2, and Cintas Corporation No. 3 (collectively "Defendants") to recover
 civil penalties payable to the state of California. Defendants' employment practices violate of a
 number of provisions of the California Labor Code and Industrial Welfare Commission ("IWC")
 Orders. In particular, Defendants failed to indemnify and/or reimburse Plaintiff and other
 aggrieved employees for use of their personal cell phone for work related matters. Defendants

1 required Plaintiff and other aggrieved employees to use their personal cell phones for work
2 related communications throughout their shifts. However, Defendants have not and do not
3 reimburse employees for the costs of this cell phone usage. In addition to the foregoing,
4 Defendants paid employees an hourly rate. However, they failed to properly calculate the
5 regular rate of pay for purposes of overtime compensation. Defendants also failed to issue
6 proper wage statements containing information required by law and to pay all wages owed upon
7 termination. As a result of Defendants' policies, Plaintiff seeks to recover civil penalties payable
8 to the State of California on behalf of the California Labor and Workforce Development Agency
9 ("LWDA") acting as a private attorney general.

10 **JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over this action pursuant to California Constitution
12 Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those
13 given by statute to other courts."

14 3. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
15 Civil Procedure Section 395. Plaintiff was employed by Defendants in Los Angeles County.
16 The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated
17 within the State of California and Los Angeles County. Defendants employ numerous similarly
18 situated employees in California and Los Angeles County and throughout the State of California.
19 There is no federal question at issue as the issues herein are based solely on California statutes
20 and law. Thus, the above entitled court maintains appropriate jurisdiction to hear this matter.

21 **THE PARTIES**

22 4. Plaintiff Luis Zambrano is a resident of California. Plaintiff was employed by
23 Defendant in the State of California as a non-exempt Service Sales Representative "SSR."

24 5. Plaintiff is informed and believes and thereon alleges, that Cintas Corporate
25 Services, Inc., is an Ohio Corporation.

26 6. Plaintiff is informed and believes and thereon alleges, that Cintas Corporation No.
27 2 is a Nevada corporation.
28

1 7. Plaintiff is informed and believes and thereon alleges, that Cintas Corporation No.
2 3 is a Nevada corporation.

3 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
4 under the fictitious names DOES 1-50, but pray for leave to amend and serve such fictitiously
5 named Defendants pursuant to California Code of Civil Procedure § 474, once their names and
6 capacities become known.

7 9. Plaintiff is informed and believe, and thereon alleges, that each and all of the acts
8 and omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-
9 50 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on
10 the other's behalf. The acts of any and all Defendants were in accordance with, and represent the
11 official policies of Defendants.

12 10. At all times herein mentioned, Defendants, and each of them, ratified each and
13 every act or omission complained of herein. At all times herein mentioned, Defendants, and each
14 of them, aided and abetted the acts and omissions of each and all the other Defendants in
15 proximately causing the damages herein alleged.

16 11. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
17 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
18 occurrences, and transactions alleged herein.

19 12. By way of this Complaint, Plaintiff brings this case as a representative action
20 seeking civil penalties for the State of California in a representative capacity, as provided by the
21 Private Attorneys General Act ("PAGA") to the extent permitted by law, as an aggrieved
22 employee.

23 13. A true and correct copy of the Notice of Defendants' violations showing
24 compliance with Labor Code § 2699.3 is attached at Exhibit "A" and demonstrates that Plaintiff is
25 an aggrieved employee and has standing to bring a representative action on behalf of LWDA as a
26 private attorney general. No notice of cure by Defendant was provided and no notice of
27 investigation was received from the LWDA in the statutorily proscribed period since the mailing
28 of the Notice. Accordingly, Plaintiff files this action as a "Representative Action" as provided by

1 California Code of Civil Procedure seeking solely civil penalties payable to the State of California
2 as specifically permitted and authorized by Labor Code § 2699.3(a)(2)(C).

3 **GENERAL ALLEGATIONS**

4 14. During all, or a portion, of the one year period before Plaintiff filed the Notice of
5 his claims with the LWDA, Plaintiff, and each of the aggrieved employees were employed by
6 Defendants in the State of California.

7 15. Defendants own, operate, or manage multiple locations in the state of California.
8 Plaintiffs are informed and believe, and thereon allege, that Defendants applied similar
9 employment practices and procedures in each of these locations.

10 16. Plaintiff and other aggrieved employees were SSRs, whose job duties included
11 servicing customer needs on-location. These job duties required Plaintiff and other SSRs to
12 frequently travel to customer sites. As part of these job duties, Plaintiff and other SSRs routinely
13 communicated with supervisors and Cintas employees regarding their routes and other issues.
14 Plaintiffs and other SSRs were required to provide their personal cell phone numbers for these
15 communications.

16 17. Defendants generally classified Plaintiff and other SSRs as non-exempt employees.
17 SSRs were required to maintain a cell phone to communicate with Defendants. Defendants
18 provided SSRs with a handheld device, but the device did not permit Plaintiff and other SSRs to
19 make or receive calls from the device. Rather, the device was to scan items upon pick-up and
20 delivery. Thus, all communications between SSRs and Defendants was through the personal cell
21 phones of the SSRs.

22 18. Defendants also provided non-discretionary commissions to Plaintiff and aggrieved
23 employees based on sales that Plaintiff and aggrieved employees participated in.

24 19. Plaintiff is informed and believes, and thereon alleges, that where Plaintiffs and
25 aggrieved employees received commissions and worked overtime, Defendants failed to properly
26 incorporate the commissions earned to calculate the employee's regular rate of pay for purposes of
27 determining overtime wages.

28 20. Defendants failed to provide accurate, itemized wage statements to Plaintiff and

1 other aggrieved employees.

2 21. Defendants failed to pay all wages owed to Plaintiff and other aggrieved employees
3 upon termination or separation from employment.

4 22. Plaintiff brings this action on behalf of himself and all other aggrieved employees
5 defined as all individuals employed by Defendants in California as "SSRs" at any time beginning
6 from one year prior to the date Plaintiff sent Notice to the LWDA, who were subject to the same
7 practices alleged herein.

8 23. Plaintiffs reserve the right to amend or modify the definition of aggrieved
9 employees with respect to the issues or in any other way.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

12 **(By Plaintiff and Aggrieved Employees)**

13 24. Plaintiff realleges and incorporates by reference as if specifically set forth herein
14 Paragraphs 1 through 23, inclusive.

15 25. Plaintiff, by virtue of his employment with Defendants and their policies regarding
16 set forth herein, is an aggrieved employee with standing to sue under PAGA. Plaintiff, by virtue
17 of the attached Exhibit "A," has satisfied all prerequisites to serve as a representative of the
18 general public to enforce California's labor laws, including, without limitation, the civil penalty
19 provisions identified in Labor Code Section 2699.5. Since the LWDA took no steps within the
20 notice period to intervene and because Defendants took no corrective action to remedy the
21 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
22 will seek any and all civil penalties otherwise being capable of collected by the State of California
23 and/or the LWDA.

24 26. Plaintiff is informed and believes, and thereon alleges, that Defendants have
25 violated and continues to violate provisions of the California Labor Code and applicable Wage
26 Orders related to the reimbursement of business related expenses, payment of regular and overtime
27 wages, the issuance of accurate and itemized wages statements, and the payment of all wages due
28

1 at termination. These sections include, but are not limited to, Labor Code Sections 201, 202, 204,
2 223, 226, 510, 512, 1194, 1198, 1199, 2802 and 2810.5.

3 27. Plaintiff, as a representative of the general public, will and does seek to recover any
4 and all civil penalties payable to the State of California for each and every violation flowing from
5 the Labor Code provisions cited above pursuant to Labor Code Sections 203, 210, 226.3, 256,
6 2699 and just civil penalties under Section 558. Funds will be distributed in accordance with
7 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
8 and/or the LWDA.

9 **PRAYER**

10 Plaintiff, on behalf of himself and all other aggrieved employees, prays for relief and
11 judgment against Defendant as follows: For penalties as provided, per each violation by the
12 Private Attorneys General Act; for attorneys' fees and costs; and for all such other and further
13 relief as the Court may deem just, proper, and equitable.

14
15 Dated: May 15, 2020

Respectfully Submitted,

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17 By: 

18 James K. Kawahito
KAWAHITO LAW GROUP
19 Attorneys for Plaintiff
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EXHIBIT A

Timothy J. Gonzales
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Robert P. Biegler
of counsel

March 11, 2020

VIA PAGA WEBSITE

California Labor & Workforce Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA U.S. MAIL - CERTIFIED

Cintas Corporation No. 2
ATTN: H.R. Department
14700 Spring Avenue
Santa Fe Springs, CA 90670

RE: Luis Zambrano v. Cintas Corporation No. 2, et al.

To Whom It May Concern:

This law firm represents Luis Zambrano.

Please allow this letter to serve as notice on behalf of Mr. Zambrano and all similarly situated aggrieved current and former employees of Cintas Corporation No. 2 and/or Cintas Corporation No. 3 (collectively "Cintas"), pursuant to California Labor Code ("Labor Code") §§ 2699 and 2699.3, for specific violations of the Labor Code committed by 1) Cintas and 2) all natural persons who are owners, directors, officers, or managing agents of Cintas.

The Parties

Cintas is a Nevada corporation, with its principal place of business in Cincinnati, Ohio. The company "designs, manufactures and implements corporate identity uniform programs and provides entrance mats, restroom cleaning and supplies, tile and carpet cleaning, promotional

products, first aid, safety, and fire protection products and services. It employs numerous employees at several locations throughout California.

Cintas employs Support Services Representatives (“SSRs”) These employees drive company vehicles to Cintas customers to replace used and/or outdated products, service any equipment that requires periodic maintenance and identify additional products and/or services that will further benefit the customer.

Although Cintas provides SSRs with “cell phones,” Cintas removes the SIM card from the phones so SSRs cannot communicate via the “phones” but can only use the “phones” to scan items, etc. SSRs were required to use a personal cell phone to make work-related calls and text messages throughout the work day as Cintas offered no other alternative methods for SSRs to communicate with Cintas employees and customers. Cintas, however, does reimburse SSRs for their personal cell phone bills.

Cintas also paid SSRs commissions but did factor in the SSRs’ commission pay in the SSRs’ overtime rate.

Cintas employed Mr. Zambrano as a SSR from March 18, 2013 to March 15, 2019.

Aggrieved Employees

Mr. Zambrano, and all other similarly situated current and former SSRs, including “SSR Helpers,” of Cintas are aggrieved employees as defined in Labor Code §2699(a) (hereinafter “Aggrieved Employees”). As such, Mr. Zambrano seeks to recover, on behalf of himself and all other current and former Aggrieved Employees affected by the Labor Code violations alleged herein, the civil penalties provided by Labor Code §§ 2698, *et seq.* (the Private Attorneys General Act (“PAGA”)), plus reasonable attorney’s fees and costs.

Liable Parties under Labor Code § 558.1

Cintas’ owners, directors, officers or managing agents, who are presently unknown, violated, and/or caused to be violated, provisions of the Labor Code. As such, Cintas’ owners, directors, officers and managing agents are personally liable for the any and all damages, penalties, attorney’s fees and costs arising from the conduct described herein.

Violation #1: Failure to Pay Wages in Violation of Labor Code §§ 204 & 210

Cintas also paid SSRs commissions but did factor in commission pay in the SSRs’ overtime rate. Consequently, all such employees were not paid for all hours they worked.

Labor Code § 204 provides in part that “all wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Pursuant to Labor Code § 210, the Aggrieved Employees are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned and \$200.00

for each subsequent failure to pay each employee all of the wages earned. In addition, for each subsequent failure to pay in connection with Labor Code § 204, the Aggrieved Employees are entitled to recover an additional amount equal to 25% of the unlawfully withheld wages.

Violation # 2: Failure to Pay Overtime Compensation in Violation of Labor Code §§ 510, 558 & 1194

Cintas routinely failed to pay SSRs proper overtime wages.

Labor Code § 510 require employers to pay employees 1 ½ times the regular rate of all those hours worked in excess of 8 hours in one workday and in excess of 40 hours in one workweek, and for the first 8 hours worked on the seventh day of work in any one workweek.

Labor Code § 1194 entitles an employee receiving less than the legal overtime compensation to recover in a civil action the unpaid balance of the full amount of all overtime wages owed, including interest thereon, reasonable attorneys' fees and costs of suit.

Labor Code § 558 provides for a civil penalty to be assessed against any employer of \$50.00 for the initial failure to compensate employees at the statutory overtime rate and \$100.00 for each subsequent violation, plus the amount of unpaid wages owed to the aggrieved employees.

Violation # 3: Failure to Provide Reimbursement for Business Expenses in Violation of Labor Code § 2802

Labor Code § 2802(a) provides "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

The Aggrieved Employees were required to use a personal cell phone to make work-related calls, but were not reimbursed for these expenses.

Labor Code § 2699 et seq. imposes a civil penalty of \$100.00 per pay period, per aggrieved employee for initial violations, and \$200.00 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code § 2802.

Labor Code § 2802(b) and (c) also allows employees to collect interest and attorney's fees.

Violation No. 4: Failure to Pay Wages Upon Discharge in Violation of Labor Code §§ 201, 202 & 203

As of the date of this Notice, Cintas has willfully failed to pay the Aggrieved Employees all the compensation they earned.

Labor Code §§ 201 and 202 require employers to pay all compensation due and owing immediately at the time of discharge, layoff, or resignation made with at least 72 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

Labor Code § 203 provides for a civil penalty against any employer who willfully violates Labor Code §§ 201 and 202 in the amount up to 30 days of an employee's wages.

Violation No. 5: Failure to Furnish Timely and Accurate Wage Statements in Violation of Labor Code §§ 226, 226.2 & 226.3

IWC Wage Order No. 4-2001(7) requires employers to keep accurate information with respect to each employee with regards to, among other things, 1) time record showing when the employee begins and ends each work period; 2) total hours worked in the payroll period; and 3) piece rates when a piece rate compensation plan is in operation.

Labor Code § 226(a) also requires an employer to provide an accurate itemized statement in writing showing: 1) gross wages earned; 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; 5) net wages earned; 6) the inclusive dates of the period for which the employee is paid; 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and 8) the name and address of the legal entity that is the employer..."

Labor Code § 226.2 provides that the itemized statement for employees compensated by piece-rate also contain: 1) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and 2) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

Labor Code § 226.3 provides that any employer who violates 226(a) shall be subject to a civil penalty in the amount of \$250.00 per employee, per first violation, and \$1,000.00 per employee for each subsequent violation.

Cintas knowingly and intentionally failed to furnish the Aggrieved Employees with timely accurate and itemized wage statements showing gross wages earned and total hours worked.

Penalties Sought Under PAGA

Mr. Zambrano and all similarly situated employees are aggrieved employees as defined in Labor Code § 2699(a). As such, Mr. Zambrano seeks to recover, on behalf of himself and all other current and former Aggrieved Employees affected by the Labor Code violations alleged herein, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs. Mr. Zambrano seeks to recover the PAGA penalties through a representative action as permitted by PAGA.

* * *

At your earliest convenience, please advise whether the LWDA intends to investigate the aforementioned allegations. The filing fee will be provided under separate cover. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Aaron Brock', written in a cursive style.

D. Aaron Brock