Morris J. Baller (SB #048928)
Roberta L. Steele (SB #188198)
Joseph E. Jaramillo (SB #178566)
James Kan (SB #240749)
GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN
300 Lakeside Dr., Suite 1000
Oakland, CA 94612
(510) 763-9800 (Telephone)
(510) 835-1417 (Fax)

Betty Eberle (SB #196914)
MINER, BARNHILL & GALLAND
44 E. Mifflin Street, Suite 803
(608) 255-5200 (Telephone)
(608) 255-5380 (Fax)

Paul Strauss (SB #153937)
MINER, BARNHILL & GALLAND
14 W. Erie Street
Chicago, IL 60610
(312) 751-1170 (Telephone)
(312) 751-0438 (Fax)

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ROBERT RAMIREZ, ROBIN BEASLEY, SANDRA EVANS, ROBERT HARRIS, LUIS POCASANGRE CARDOZA, JOSE SALCEDO, A. SHAPPELLE THOMPSON, CORETTA SILVERS (formerly VICK), BLANCA NELLY AVALOS, and AMY SEVERSON, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

vs.

CINTAS CORPORATION,

Defendant.

CASE NO. C04-00281-JSW

[RELATED TO CASE NO. C05-03145-JSW]

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO VACATE ARBITRATION AWARD

Date: December 1, 2006
Time: 9:00 a.m.
Dept: 2, 17th Floor
Hon. Jeffrey S. White

Complaint Filed: January 20, 2004

LARRY HOUSTON and CLIFTON COOPER, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CINTAS CORPORATION,

Defendant.

CASE NO. C05-03145-JSW

[RELATED TO CASE NO. C04-00281-JSW]

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO VACATE ARBITRATION AWARD

Date: December 1, 2006
Time: 9:00 a.m.
Dept: 2, 17th Floor
Hon. Jeffrey S. White

Complaint Filed: August 3, 2005

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

Page(s)

TABLES OF AUTHORITIES (continued)

Page(s)

STATE CASES

TABLES OF AUTHORITIES (continued)

Page(s)

DOCKETED CASES

FEDERAL STATUTES

STATE STATUTES

AAA RULES

MISCELLANEOUS

SUMMARY OF ARGUMENT

Defendant Cintas Corporation ("Cintas") raises no legitimate ground on which this Court may vacate any portion of the Arbitrator's Opinion and Decision Re: Issues of Class Action Arbitration (Aug. 16, 2006) ("Award").[1] Cintas does *not* challenge the conclusion of the Arbitrator, Judge Eugene F. Lynch (Ret.), that class-wide arbitrations are allowed under the Cintas Employment Agreements, but seeks to vacate only the portion of the Award ruling that the Agreements do not limit the geographic scope of the putative class arbitration. This Court's review of the present matter is extremely limited: the Court may only vacate the challenged portion of the Award if the Arbitrator's decision was completely irrational or in manifest disregard of the law. *See Kyocera Corp. v. Prudential-Bache Trade Services, Inc.*, 341 F.3d 987, 998 (9th Cir. 2003) (*en banc*). Significantly, the misinterpretation of a contract provision by an arbitrator does not support vacatur of the arbitration award. *See Haw. Teamsters and Allied Workers Union, Local 996 v. United Parcel Service*, 241 F.3d 1177, 1183 (9th Cir. 2001). Because Cintas' contention is entirely dependent on its allegation that Judge Lynch *misinterpreted* an (at best ambiguous) term in the Employment Agreements, this Court may not vacate the Award.

Moreover, even assuming that misinterpretation of a contract could support vacatur, Judge Lynch's interpretation in this case was not erroneous. Judge Lynch applied well-settled principles of contract law to construe the language at issue according to its plain and ordinary meaning, giving force to every provision of the contract. He also held that, to the extent the language is ambiguous, it must be construed against the drafter, Cintas. Judge Lynch thus reasonably concluded that what Cintas argues is a venue restriction merely requires an employee initiating arbitration to request that it be held in the county of last employment. Because Cintas compelled arbitration in this judicial district, that provision does not apply here. In any case, it cannot apply to absent class members, who have not requested an arbitration, and who are entitled to benefit from class-wide relief should a class be certified. Accordingly, this Court should deny Cintas' motion to partially vacate the Award.

[1] The Award is attached as Exhibit V to the Declaration of Paul Grossman in Support of Defendant Cintas Corporation's Motion to Vacate Arbitration Award ("Grossman Decl.") filed on September 15, 2006 by Cintas (Dkt. 210-1).

BACKGROUND

Plaintiffs in these two related actions worked for Cintas in various states. They were either compelled, or stipulated, to arbitration in the Northern District of California. Following this Court's grant of Cintas' motion to compel arbitration, in which this Court held that the question of whether plaintiffs' claims could be arbitrated on a class basis was for the arbitrator to decide (*see* Order (Mar. 22, 2005), Dkt. #81, at 14), the parties selected former United States District Court Judge Eugene F. Lynch (Ret.) to arbitrate their claims in San Francisco.

Pursuant to this Court's orders and Rule 3 of the American Arbitration Association ("AAA") Supplementary Rules for Class Arbitration ("Class Arbitration Rules"),[2] Judge Lynch was tasked with "Clause Construction": deciding whether, based on the plain language of the Cintas Employment Agreements, plaintiffs' claims could be arbitrated on a class basis. Cintas argued (based on the language of the agreement) that the arbitration clause did not permit class arbitrations and, alternatively, that it required that any class arbitration be limited in geographic scope to the county in which the employee works or last worked. Plaintiffs disagreed, arguing that the language of the employment agreements permitted class-wide arbitration with no geographic boundaries.

On August 16, 2006, after full briefing by both parties and oral argument,[3] Judge Lynch concluded that "the Cintas Employment Agreements permit class-wide arbitration, and there is no limitation to where the class action may be heard by virtue of a claimed 'place of arbitration' clause." Award at 16.

Cintas does not contend that Judge Lynch exceeded his power when he held that the Agreements permit class-wide arbitration. Instead, Cintas' entire challenge to the Award, although couched in the guise of lack of jurisdiction, simply consists of its disagreement with Judge Lynch's interpretation of *one* (very long and convoluted) sentence in the multi-page arbitration clause in the Agreements, which reads:

> To have a fair, timely, inexpensive and binding method of resolving any such dispute or difference remaining unresolved after Employee and Employer confer in good faith,

[2] The AAA Class Arbitration Rules are included in Exhibit X to the Grossman Declaration.

[3] The July 7, 2006 Clause Construction hearing lasted approximately three hours.

> should Employee desire to pursue Employee's claim, Employee shall, within one year of the date when the dispute or difference first arose or within one year of when Employee's employment ends, whichever occurs first, submit to Employer a written request to have such claim, dispute or difference resolved through impartial arbitration conducted in accordance with the American Arbitration Association's National Rules for the Resolution of Employment Disputes and held in the county and state where Employee currently works for Employer or most recently worked for Employer.

See Award at 9:17-26 (quoting arbitration clause).

Cintas urged Judge Lynch to parse and interpret the phrase "held in the county and state where Employee currently works for Employer or most recently worked for Employer" - the last phrase of the sentence - in isolation from the rest of the sentence. Cintas argued that the subject phrase, standing alone, meant that *any* arbitration under the agreement must be held in the county where the Employee had last worked for Cintas - *i.e.*, that the phrase constituted a venue clause.

Plaintiffs argued that the phrase must be interpreted in the context of the entire sentence and cannot be read in isolation. The operative portion of the sentence reads: "*Employee shall . . . submit . . . a written request* to have such claim . . . resolved through impartial arbitration [1] conducted in accordance with [AAA rules] . . . and [2] held in the county and state where Employee currently works for Employer. . . ." *Id.* (emphasis added). Read in the context of the entire sentence, the phrase could only be interpreted to mean that if an employee *requests* arbitration, the employee must request that it be held in the county where the employee last worked for Cintas. Moreover, in this case, Plaintiffs did not submit a request for arbitration. Rather, Cintas moved this Court compel arbitration, and the Court ordered that arbitration must take place in this judicial district.

Judge Lynch rejected Cintas' arguments and agreed with plaintiffs. He concluded that the sentence "simply directs the employee to request an arbitration that is held in the county and state where he or she works or last worked but does not mandate that the arbitration, including a class arbitration, actually be held there." Award at 14-15. Thus, since the instant arbitration has already been initiated (via a motion to compel, not an employee's request for arbitration) and since the question before Judge Lynch concerned whether class members could benefit from an arbitration that had already been initiated, the phrase is not applicable to the present arbitration.

Judge Lynch devoted over four pages of the Award to the explanation of his interpretation of this phrase. *See* Award at 13-17. In those pages, Judge Lynch explained that his interpretation was based on Cintas' "*choice of language*," including the existence of another provision that contradicted Cintas' interpretation.[4] *Id.* at 14-15. Judge Lynch also stated that the interpretation was based on the "*location*" of the phrase within the arbitration clause, including the fact that the provision "was placed at the end of a very lengthy and convoluted sentence dealing with initiation of the arbitration process." *Id.* at 15. Judge Lynch determined, finally, to give the provision its "plain and ordinary meaning," and to the extent it was ambiguous, to construe it against Cintas as the drafter of the language. *Id.* at 15-16.

ARGUMENT

I. GIVEN THE EXTREMELY DEFERENTIAL REVIEW, VACATUR IS NOT WARRANTED EVEN BY ERRONEOUS FINDINGS OF FACT OR MISINTERPRETATIONS OF LAW OR CONTRACT.

"An arbitrator's award must be upheld as long as it 'draws its essence' from the agreement." *Int'l Union of Petroleum and Indus. Workers v. W. Indus. Maintenance, Inc.*, 707 F.2d 425, 429 (9th Cir. 1983) (citing *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596-97 (1960)). The Ninth Circuit, in *Kyocera Corp.*, recently reiterated the "extremely limited review authority" applicable to an arbitration award, explaining that vacatur of the award is not warranted even by "erroneous findings of fact or misinterpretations of law." *Id.* at 998. Rather, Section 10 of the Federal Arbitration Act ("FAA") permits vacatur only:

> (1) where the award was procured by **corruption, fraud, or undue means;**
>
> (2) where there was evident **partiality or corruption** in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in **refusing to postpone** the hearing, upon sufficient cause shown, or in **refusing to hear evidence** pertinent and material to the controversy; or of any other **misbehavior** by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators **exceeded their powers,** or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

[4] Judge Lynch found that the phrase allowing party to move to enforce the Agreement in any court having jurisdiction contradicted Cintas' position that all arbitrations must be held in the county of last employment. *See* Award at 14-15.

Id. at 997 (citing 9 U.S.C. § 10(a)) (emphasis in original).

Cintas argues that vacatur of a portion of Judge Lynch's award is warranted on the fourth basis – that he exceeded his power. Def. Br. at 6-7. However, the Ninth Circuit has held that "arbitrators 'exceed their powers'. . . *not when they merely interpret or apply the governing law incorrectly*, but when the award is 'completely irrational,' or exhibits a 'manifest disregard of law.'" *Id.* (emphasis added) (quotations omitted). *See also G.C. & K.B. Invs., Inc. v. Wilson,* 326 F.3d 1096, 1105-06 (9th Cir. 2003) (discussing the standard). Cintas does not argue that Judge Lynch's award is completely irrational or in manifest disregard of the law, but merely disagrees with his interpretation of the arbitration clause. As mere disagreement with an arbitrator's contract interpretation does not support a motion to vacate an arbitration award (*see Haw. Teamsters*, 241 F.3d at 1183), Cintas' objection to Judge Lynch's award does not fall within the clear standard of error necessary for vacatur.

A. Cintas' Motion Is Simply an Improper Request to Reinterpret an Ambiguous Provision of the Employment Agreement.

Cintas contends that Judge Lynch exceeded his jurisdiction under the Cintas Employment Agreements when he ruled that he could decide out-of-state class members' claims in a California arbitration. Cintas' objection is based *entirely* on its contention that the agreements "expressly" provide that "*any* arbitration between Cintas Corporation [] and an employee is to be 'held in the county . . . where Employee . . . worked.'" Def. Br. at 1 (emphasis added). Cintas is wrong, as there is no such express provision in the Agreements.[5]

Thus, despite the window dressing, Cintas' motion to vacate is nothing more than a request that this Court reject Judge Lynch's interpretation of an at best ambiguous provision and substitute Cintas' interpretation. The Ninth Circuit has explicitly rejected Cintas' strategy of attempting to "open a back door to judicial review of the merits of an arbitral award":

> [Petitioner's] position would result in the exception swallowing the rule; any time an arbitrator arrived at a result that a party believes to be the result of faulty contract interpretation, it could obtain judicial review of the merits by phrasing its disagreement

[5] The relevant language of the agreements reads: "Employee shall . . . submit . . . a written request to have such claim . . . resolved through impartial arbitration conducted in accordance with [AAA rules] . . . and held in the county and state where Employee . . . most recently worked for Employer." Award at 9:20-26 (quoting the Cintas Employment Agreement of Plaintiff Salcedo) (emphasis added).

> with the arbitrator's award as a complaint that he disregarded the contract and "dispensed his own brand of industrial justice." But the fact that an arbitrator arguably misinterpreted a contract does not mean that he did not engage in the act of interpreting it. As bears repeating, "so far as the arbitrator's decision *concerns* construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *Enterprise Wheel,* 363 U.S. at 599 (emphasis added).

Haw. Teamsters, 241 F.3d at 1183. It is well established law that a court cannot substitute its interpretation of a contract for that of an arbitrator:

> [E]ven if we were to disagree with the arbitrator's approach, it is not our task to intrude into the arbitration process and substitute our judgment for his. *See Enterprise Wheel,* 363 U.S. at 599, 80 S.Ct. 1358; *Stead Motors* [*of Walnut Creek v. Automobile Machinists Lodge No. 1773*], 886 F.2d [1201,] 1204 [(9th Cir. 1969)]; *San Francisco-Oakland Newspaper Guild v. Tribune Publ'g Co.,* 407 F.2d 1327, 1327 (9th Cir. 1969).

Id. at 1182. *See also Enter. Wheel,* 363 U.S. at 599 ("courts have no business overruling [the arbitrator] because their interpretation of the contract is different from his."). Cintas' motion to vacate should thus be denied because it is based solely on its disagreement with Judge Lynch's interpretation of the arbitration clause. The Court cannot vacate it based on Cintas' disagreement.

B. Reinterpretation Under the Guise of *De Novo* Review Is Not Permitted.

Cintas improperly makes another backdoor attempt to having this Court reinterpret the arbitration provision at issue by asserting that the proper standard for this Court to apply is *de novo* review. This is incorrect. It is well established that district courts have "extremely limited review authority" over an arbitration award, *Kyocera Corp.,* 341 F.3d at 998, and the Ninth Circuit has stated that *de novo* review of an arbitral award is not proper: "Our role [in reviewing an arbitral award] is severely limited compared to our routine *de novo* review of a district court's interpretation of contract language." *Haw. Teamsters,* 241 F.3d at 1182 (citing *Stead Motors,* 886 F.2d at 1205 (noting "the unique character of an arbitrator's function and the nearly unparalleled degree of deference we afford his decisions.")).

The case law Cintas relies on does not hold that *de novo* review is appropriate. On the contrary, Cintas' case law states that an arbitration award is entitled to judicial deference, and *under that deferential standard*, an award that exceeds the express terms of the agreements should be vacated. *See, e.g., U.S. Postal Serv. v. Am. Postal Workers Union, AFL-CIO*, 204 F.3d 523, 527 (4th

Cir. 2000) ("Underlying judicial deference to arbitral awards is the principle that the terms of the parties' agreement are controlling. This same principle requires courts to vacate awards when an arbitrator exceeds his authority under . . . [an] agreement."); *Delta Queen Steamboat Co. v. District 2 Marine Eng'rs Beneficial Ass'n, AFL-CIO*, 889 F.2d 599, 604 (5th Cir. 1989) ("arbitral action contrary to *express* contractual provisions will not be respected.") (emphasis added). This does not constitute *de novo* review. Moreover, Judge Lynch's award is entitled to judicial deference and Cintas has not met its burden of showing that the Award exceeds the express terms of the contract under the circumstances here.

C. Reinterpretation Under the Guise of a *Bazzle* "Gate-Keeping Issue" Is Not Permitted.

Cintas' final attempt to persuade this Court to reinterpret the arbitration clause is to assert that the location of an arbitration is a "gate-keeping issue," and thus under *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), is "for [the] court to decide." Def. Br. at 9. Cintas misrepresents the law. In *Bazzle*, the Supreme Court stated that in "certain limited circumstances, courts assume that the parties intended courts, not arbitrators, to decide a particular arbitration-related matter." *Bazzle*, 539 U.S. at 452. Those limited issues consist of the "validity of the arbitration clause" and "its applicability to the underlying dispute between the parties." *Id.* Neither of these limited issues applies here.

Moreover, the Supreme Court has also held that certain issues are "presumptively *not* for the judge, but for an arbitrator, to decide." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002). These include "procedural" gateway questions, such as defenses to arbitrability and whether time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate are met. *Id.*

Significantly, the Supreme Court in *Bazzle* held that the issue regarding whether a contract forbids class arbitration should be decided by the arbitrator because it "concerns neither the validity of the arbitration clause nor its applicability to the underlying dispute between the parties." 539 U.S. at 452. The same is true for the location of arbitration. *See Richard C. Young & Co., Ltd. v. Leventhal*, 389 F.3d 1, 5 (1st Cir. 2004) ("Since the dispute between the parties is concededly arbitrable,

determining the place of the arbitration is simply a procedural matter and hence for the arbitrator."); *Gill v. World Inspection Network Int'l, Inc.* 2006 WL 2166821, *4 (E.D.N.Y. 2006) (holding that validity of a forum selection provision was a procedural matter for an arbitrator, not a court, to decide); *Ciago v. Ameriquest Mortgage Co.*, 295 F. Supp. 2d 324, 329-31 (S.D.N.Y. 2003) (noting that the interpretation of the forum selection clause was for the arbitrator to decide). Thus, under Supreme Court jurisprudence, the issue of the location of an arbitration is for the arbitrator to decide.

II. EVEN IF IT WERE PROPER FOR THIS COURT TO REVIEW THE MERITS OF THE ARBITRATOR'S CONTRACT INTERPRETATION, IT WOULD FIND NO ERROR.

Even if Cintas' disagreement with Judge Lynch's interpretation of the contract could form the basis for vacating a portion of the Award (which, as explained above, it does not), Judge Lynch's determination that the contract does not require that all arbitrations be held in the county where the employee last worked is not erroneous. Judge Lynch applied well-settled principles of state contract law to construe the arbitration clause according to its plain meaning and to give force to every provision. *See* Award at 6-7 (citing *The Ratcliff Architects v. Vanir Constr. Mgmt.*, 88 Cal. App. 4th 595, 601-602 (2001) (applying contract interpretation principles to the arbitration clause).[6] Thus, Judge Lynch's award cannot be found to be completely irrational or in manifest disregard of the law and may not be vacated.

A. The Fact that the Contract Provides that Arbitration Can Be Compelled in the District of "Any Court Having Jurisdiction" Contradicts Cintas' Interpretation.

Cintas' disagreement with Judge Lynch's first finding regarding his interpretation of the provision at issue has no merit. Judge Lynch noted that "the phrase at issue does not explicitly provide that the county where the employee . . . last worked is the *only* place the arbitration may be initiated or

[6] The Award correctly notes, and Cintas does not dispute, that the rules for interpreting contracts are similar in all of the states at issue. *See* Award at 6. *See also* Restatement (Second) of Contracts, § 202(3)(a) (contract should be construed as written in a manner that gives the terms their plain, natural, and ordinary meaning in the context of the entire agreement); 17A Am. Jur. 2d Contracts § 356; Cal. Civ. Code § 1638; *Computer Assocs. Int'l, Inc. v. U.S. Balloon Mfg. Co., Inc.*, 10 A.D.3d 699 (N.Y. App. 2004); *Internet East, Inc. v. Duro Communications, Inc.*, 553 S.E.2d 84, 87 (N.C. App. 2001); *Cincinnati Ins. Co. v. Anders*, 789 N.E.2d 1094, 1098 (Ohio 2003); *Ringle v. Bruton*, 86 P.3d 1032, 1039 (Nev. 2004).

held." In fact, he noted, another provision of the Cintas Employment Agreements stating that a motion to compel arbitration could be brought in "*any* court having jurisdiction" suggests the contrary. Award at 14 (emphasis added).[7] As this Court has already recognized, a district court may compel arbitration to take place only where the motion was brought,[8] which may or may not be the home county of the employee.

Indeed, the facts of the present case illustrate this point. Plaintiff Salcedo is arbitrating his claims in San Francisco[9] because Cintas filed a motion to compel in the Northern District of California, a "court having jurisdiction." Under Cintas' interpretation of the arbitration clause, Salcedo would have to arbitrate his claims in Suffolk County, New York. This is clearly not the case. Thus, construing the arbitration clause according to its plain and ordinary meaning and giving force to the provision permitting arbitration to be compelled in "any court having jurisdiction," Judge Lynch reasonably concluded that the disputed term "only concerns the process of initiating arbitration, not the location of the proceeding thereby initiated." *Id.* at 15.

Cintas' attack on Judge Lynch's reasoning is nonsensical. Cintas writes:

> [The motion to compel] provision in no way contradicts the place-of-arbitration term. First, suits under the FAA cannot be brought in every county. Most counties host no federal courts.

Def. Br. at 12. There is no significance to the fact that most counties host no federal court; the fact remains that the judicial district in which arbitration may be compelled can be different from the county in which the employee last worked for Cintas. Cintas continues:

> Second, if the employee sues in an inappropriate court, as here, a proceeding to enforce the arbitration agreement *might have to be filed* in that court. There is no inconsistency whatsoever between the quoted clause and the specification elsewhere of where the arbitration must be held.

---

[7] This provision reads: "A legal action . . . to enforce the agreement to arbitrate . . . may be filed and pursued in any court having jurisdiction. . . ." Award at 9.

[8] This Court ruled: "The Ninth Circuit has interpreted this provision of 9 U.S.C. § 4 to require that a court compelling arbitration under the FAA, order the arbitration to proceed within the district in which the petition to compel has been filed. *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967, 968-69 (9th Cir. 1941)." Order (Mar. 22, 2005), Dkt. #81, at 16.

[9] Curiously, Cintas refers to the arbitrations as taking place in Alameda County. However, the clause construction hearing took place in the City and County of San Francisco.

Id. This is simply wrong. The FAA permits a party to "petition *any United States district court* which . . . would have jurisdiction . . . of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4 (emphasis added). Cintas could have sought to, but did not, compel the arbitrations of plaintiffs' claims in the counties in which they last worked. In fact, in *Veliz v. Cintas Corp.*, in which the underlying wage and hour suit was filed in the Northern District of California, Cintas moved to compel arbitration in districts across the United States where the home counties of the plaintiff-employees in question were located. *See* Grossman Decl., Exh. Q (Suppl. Jaramillo Decl. in Support of Claimants' Brief in Support of Clause Construction Determination, at Exhs. 1 & 2). Thus, Cintas knows well that "a proceeding to enforce the arbitration agreement" *may* be filed in any district court with jurisdiction, regardless of where the plaintiff has sued.

B. The Location of the Phrase Within a Sentence Dealing with the Initiation Process Is Significant with Regard to Interpretation.

Cintas' disagreement with Judge Lynch's second finding regarding his interpretation of the phrase at issue also has no merit. Judge Lynch found that the location of the alleged "place-of-arbitration" phrase within a sentence dealing with initiation of the arbitration process militates against interpreting it as a venue restriction for class arbitration, giving the language of the contract its plain and ordinary meaning. *See* Award at 15. The manifest purpose of the sentence at issue, he reasoned, is to require the employee to "submit a request" to Cintas in order to initiate an arbitration. That submission must contain two requests: (1) arbitration under the AAA Employment Rules, and (2) that the arbitration be held in the county where the employee last worked. Thus, the sentence does not require that *all* arbitrations, including class arbitrations, regardless of how initiated, be held in the county where the employee last worked; it merely provides that an employee who initiates arbitration must *request* that it be held there. Had Cintas intended to require that *all* arbitrations be held only in the county of last employment, and that the geographic scope of a class arbitration be limited to such a county, it could have said so by including a venue restriction setting forth this requirement "separately, clearly, and unambiguously," as Judge Lynch explained. Award at 15.

Cintas cites two inapposite cases that deal with venue clauses embedded in larger paragraphs. See Def. Br. at 13 (citing *Gill*, 2006 WL 2166821, and *Madden v. Protection One Monitoring, Inc.*, 358 F. Supp. 2d 1218 (N.D. Ga. 2004)). In neither of these cases, however, was the interpretation of the venue provisions at issue. The issue was, rather, whether the arbitration agreements were procedurally unconscionable. *Madden* is also inapplicable here because it did not even involve a venue restriction, but rather the enforceability of the arbitration clause's requirement that plaintiff pay one-half of the arbitration costs and expenses. *See id.* at 1221.

C. Arguments Regarding Convenience of Witnesses and Location of Evidence Do Not Bear on the Interpretation of the Arbitration Clause.

Cintas claims that Judge Lynch erred by ignoring the "inherent reasonableness of and logic behind the [arbitration initiation] term" – that of facilitating witness convenience and access to evidence. *See* Def. Br. at 10. However, contract interpretation is governed by the plain language of the contract, and nothing in the Cintas arbitration clause addresses witness convenience or access to evidence. Thus, Judge Lynch reasonably and properly found that Cintas' arguments regarding convenience of witnesses and location of evidence "do not bear on the interpretation of the arbitration clause but to the later determination of class certification." Award at 16, n. 11. Indeed, the importance Cintas places on this matter is undercut by the fact that Cintas itself chose the Northern District of California as the forum for plaintiffs from New York, North Carolina, and Nevada.

D. The Arbitrator's Interpretation Does Not Render Contract Language Meaningless.

Cintas argues that Judge Lynch failed to give any meaning to the arbitration initiation term at issue. *See* Def. Br. at 14. Yet, Judge Lynch specifically found that "giving this language its plain and ordinary meaning, it simply directs the employee to request an arbitration that is held in the county and state where he or she works or last worked . . . ." Award at 15-16. Judge Lynch's interpretation thus does not render the term meaningless, but accords it a specific meaning based on the applicable principles of contract interpretation. The fact that the present situation does not involve an employee requesting arbitration simply means that the phrase is not applicable to the situation, not that the phrase has no meaning.

The caselaw cited by Cintas is inapposite. *See* Def. Br. at 14 (citing *W. Employers Ins. Co. v. Jeffries & Co.*, 958 F.2d 258 (9th Cir. 1992) and *Pac. Motor Trucking Co. v. Auto. Machinists Union*, 702 F.2d 176 (9th Cir. 1983)). In *Jeffries & Co.*, the arbitration agreement required that the arbitrator make findings of fact and conclusions of law, but the arbitrator failed to do so. *See* 958 F.2d at 262. Similarly, in *Pacific Motor Trucking Co.*, the collective bargaining agreement gave the company discretion over the foreman position without regard to seniority, but the arbitrator held that demotion of a foreman was unjust precisely because of the foreman's seniority. *See* 702 F.2d at 177. By contrast, Judge Lynch did not disregard any term of the contract here, but rather, construed the contract's terms applying well-settled rules of contract interpretation.

E. The Arbitrator Correctly Found That, To the Extent the "Arbitration Initiation" Term is Ambiguous, It Must Be Construed Against Cintas.

Cintas fails to address Judge Lynch's final rationale for interpreting the location provision to provide for arbitration initiation, rather than venue restriction. Judge Lynch specifically held: "to the extent the clause is *ambiguous*, all of the relevant state's contract laws (Ohio, California, New York, and North Carolina) have adopted the principle that ambiguities in contract language are to be construed against the drafter, *i.e.* Cintas."[10] Award at 16 (emphasis in original). At most, Cintas' proffered interpretation of the term as providing for an inflexible venue restriction is just one interpretation of ambiguous contract language. Judge Lynch reasonably and correctly construed that ambiguity against Cintas.

III. THE *VELIZ V. CINTAS* CLAUSE CONSTRUCTION DETERMINATION IS CONSISTENT WITH THE ARBITRATOR'S CONTRACT INTERPRETATION.

Cintas argues that the Award should be vacated because another arbitrator interpreted the arbitration initiation clause differently in a wage and hour arbitration, also against Cintas. *See* Def. Br. at 14-15. Differing contract interpretations between arbitrators, however, is not a ground to vacate an

[10] *See also* Restatement (Second) of Contracts, § 206; *Westfield Ins. Co. v. Galatis*, 797 N.E.2d 1256, 1277 (Ohio 2003); *Weil v. Fed. Kemper Life Assurance Co.*, 7 Cal.4th 125, 161 (1994) (citing Cal. Civ. Code § 1654); *Graff v. Billet*, 477 N.E.2d 212, 213-14 (N.Y. 1985); *Chavis v. S. Life Ins. Co.*, 347 S.E.2d 425, 427 (N.C. 1986); *Ringle*, 86 P.3d at 1039.

award. As set forth above, the Court could not vacate the Award even if the Court *itself*, let alone another arbitrator, disagreed with Judge Lynch's contract interpretation. *See Haw. Teamsters*, 241 F.3d at 1183.

Regardless, the *Veliz* arbitrator's interpretation of the location provision is, in fact, in line with Judge Lynch's interpretation, not Cintas', as the *Veliz* arbitrator recognized that the location provision is directly tied to an employee's *request* for arbitration:

> [T]he clear and unequivocal language of the provision [] stipulates that *should an employee "request" to have a dispute heard in arbitration*, the arbitration must be "held" in the state and county where the employee works, or has worked, for Cintas.

Clause Construction Award and Ruling on Scope of Arbitration, *Veliz v. Cintas Corp.*, AAA Case No. 11 160 01323 04 (July 27, 2006)[11] at 4 (emphasis added).[12]

IV. CINTAS' REQUEST FOR PARTIAL VACATUR SHOULD BE DENIED AS MOOT BECAUSE A NATIONWIDE CLASS ARBITRATION CAN PROCEED ON THE INDEPENDENT GROUND THAT VENUE RESTRICTIONS DO NOT APPLY TO ABSENT CLASS MEMBERS.

Although no grounds exist to partially vacate Judge Lynch's ruling, Cintas' request should also be denied as moot because the location of this arbitration has already been determined by the Court, and a nationwide class arbitration can proceed on the independent ground that venue restrictions do not apply to absent class members. Thus, assuming *arguendo* that the provision were a venue clause, that term still could not limit the right of absent class members to benefit from class-wide relief. *See Abrams Shell v. Shell Oil Co.*, 343 F.3d 482, 489 (5th Cir. 2003) ("Because class actions do not necessarily require the presence of a class member before the court for an adjudication of his/her rights

[11] Grossman Decl., Exh. W.

[12] While not directly relevant here, Cintas misrepresents the *Veliz* arbitrator's conclusion. The *Veliz* arbitrator stated that the provision was not applicable to those employees compelled to arbitrate" (*Veliz* at 5), and whether those employees' arbitration could proceed as a class action would await the class certification stage. Id. at 8. Further, with respect to the other claimants, the arbitrator expressed no opinion on whether the employees may be bound by any class determinations in the arbitration. *Veliz*, at 7-8, n.3. In fact, Cintas has moved to vacate the portion of the *Veliz* arbitration award that permits some claimants to proceed in a putative class action. *See Veliz et al. v. Cintas Corporation, et al.*, Case No. 4:03-cv-01180-SBA (N.D. Cal.), Defendant Cintas' Motion to Confirm in Part and Vacate in Part (Sept. 5, 2006), Dkt. #531, at 3, 15-16.

and liabilities, venue restrictions are not determinative of the ability of the court to hear the action with respect to all members of the class.").[13]

CONCLUSION

For the foregoing reasons, the Court should deny Cintas' motion to partially vacate the Award.

Dated: October 13, 2006

Respectfully submitted,

/s/ Joseph E. Jaramillo

Joseph E. Jaramillo (SB #178566)
Morris J. Baller (SB #048928)
Roberta L. Steele (SB #188198)
James Kan (SB #240749)
GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
(510) 763-9800 (Telephone)
(510) 835-1417 (Fax)

Betty Eberle (SB #196914)
MINER, BARNHILL & GALLAND
44 E. Mifflin Street, Suite 803
(608) 255-5200 (Telephone)
(608) 255-5380 (Fax)

Paul Strauss (SB #153937)
MINER, BARNHILL & GALLAND
14 W. Erie Street
Chicago, IL 60610
(312) 751-1170 (Telephone)
(312) 751-0438 (Fax)

ATTORNEYS FOR PLAINTIFFS

[13] *See also In re Gap Sec. Litig.*, 79 F.R.D. 283, 292 n. 6 (N.D. Cal. 1978) (and cases cited); *Abrams Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1107 n. 5 (C.D. Cal. 2001) ("venue need not be proper as to the unnamed members of the class, so long as it is proper as to all named plaintiffs") (emphasis in original); *Bywaters v. United States*, 196 F.R.D. 458, 463-64 (E.D. Tex. 2000); *United States v. Trucking Employers, Inc.*, 72 F.R.D. 98, 100 (D.D.C. 1976).