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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 99-10518-GHK (AJWx)** CV 01-7382-GHK (AJWx)	Date	September 27, 2012
Title	***Wen-Wan Chang, et al. v. United States of America*** *Kyung Sook Ahn, et al. v. United States of America*		

Presiding: The Honorable	**GEORGE H. KING, CHIEF U. S. DISTRICT JUDGE**	
Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers) Order re:** Joint Motion for Preliminary Approval of Settlement

This matter is before us on the Parties' Joint Motion for Preliminary Approval of Settlement ("Motion") [Dkt. No. 364]. As the Parties are familiar with the facts of this case, we repeat them only as necessary. Accordingly, we rule as follows.

I. Conditional Class Certification

The Parties incorrectly state that we certified a general class in this case. On August 29, 2005, we declined to certify a class and ordered the Parties to jointly propose a class definition. [Dkt. No. 127]. We then approved a proposed order stipulating to a class definition on October 17, 2005, but we did not certify a class on that date. [Dkt. No. 132]. Despite the lack of clarity in subsequent Orders, we have only approved a class definition; we have not certified a class under Rule 23. As discussed at the September 24, 2012 hearing on Preliminary Approval, we therefore will treat the class definition in the Settlement Agreement as a request to conditionally certify the class for purposes of settlement. Accordingly, the Parties seek conditional certification of the following class:

> All aliens, including derivative beneficiaries, who invested in one of the AIS Partnerships described in paragraphs 215 to 242 of the original Ahn Complaint, who had an I-526 petition approved by the Attorney General after January 1, 1995, and before August 31, 1998, and were granted conditional resident status pursuant to the Immigration and Nationality Act, section 203(b)(5), 8 U.S.C. § 1153(b) (5), and who timely filed, in accordance with INA section 216A(c)(1)(A), 8 U.S.C. § 1186b(c)(1)(A), and before November 2, 2002, an I-829 petition requesting the removal of such conditional basis, and who have received or will receive a denial of their permanent residency because they are unable to comply with the investment and employment requirements under INA sections 203(b)(5) and 216A and existing regulations.

(Settlement Agmt. ¶ II.A.2 [Dkt. No. 363]).

A. Rule 23(a) Requirements

Rule 23(a) provides that

> [o]ne or more members of a class may sue . . . as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

1. Numerosity

There is no numerical cut-off to determine whether a class is sufficiently numerous. *Keegan v. American Honda Motor Co., Inc.*, ___ F.R.D. ___, 2012 WL 2250040, at *11 (C.D. Cal. 2012). "As a general rule, [however,] classes of 20 are too small, classes of 20-40 may or may not be big enough depending on the circumstances of each case, and classes of 40 or more are numerous enough." *Id.*

The proposed class is sufficiently numerous to justify certification. Between the two consolidated actions, *Chang* and *Ahn*, there are potentially more than 400 class members who invested in AIS partnerships. Joinder of this many individuals in one suit would be impracticable. *See Dutton v. Carolina Power*, 2012 WL 2390012, at *3 (D. S.C. 2012) ("No specific number is needed to satisfy" the numerosity requirement; Plaintiff need only show that joinder is impracticable.).

2. Commonality

Commonality requires that class claims "depend upon a common contention . . . . That common contention, moreover, must be of such a nature that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Commonality does not require that all questions of law or fact raised in the litigation be common; so long as one issue affects all or most of the class members, class certification is proper. *See, e.g.*, *Steward v. Winter*, 669 F.2d 328 (5th Cir. 1982).

The proposed class members share at least two common questions of law and fact. First, Plaintiffs allege that Defendant should be estopped from denying the proposed class members' I-829s because Defendant's alleged affirmative misconduct was the sole cause of the members' inability to

comply with the investment and job preservation requirements. Second, Plaintiffs allege that Defendant impermissibly sought to apply the Precedent Decisions retroactively to all members. These "common contentions" are capable of classwide resolution.

Accordingly, although there may be individual issues present, especially as to causation, there is sufficient commonality among the proposed class. *See, e.g.*, *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) ("Differences among class members with respect to the merits of their actual document fraud cases, however, are simply insufficient to defeat the propriety of class certification. What makes the plaintiffs' claims suitable for a class action is the common allegation that the INS's procedures provide insufficient notice.").

3. Typicality

A class action is proper only where "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct.'" *Wolin v. Jaguar Land Rover North America, LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). The class representative "must be part of the class and possess the same interest and suffer the same injury as the class members." *CRLA v. Legal Servs. Co.*, 917 F.2d 1171, 1175 (9th Cir. 1990).

The named Plaintiffs allege, on behalf of themselves and the proposed class, that Defendant impermissibly applied the Precedent Decisions retroactively and prevented Plaintiffs from being able to comply with the investment and job preservation requirements. As such, named Plaintiffs allege that their I-829 petitions, and the I-829 petitions of all proposed class members, will be denied by Defendant. Consequently, named Plaintiffs raise claims that are typical to the proposed class members.

4. Adequacy of Representation

Representation is adequate if the: (1) attorney representing the class is qualified and competent; and (2) class representatives do not have interests antagonistic to the remainder of the class. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978); *see also In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 462 (9th Cir. 2000).

Counsel adequately represents the class as they are private firms that specialize in immigration law, have litigated countless cases challenging practices of the INS, and have considerable experience in handling class action litigation. Additionally, another court has recognized Plaintiffs' counsel, Mr. Kurzban, as adequate counsel in an action challenging Defendant's procedures. *Tefel v. Reno*, 972 F. Supp. 608, 617-18 (S.D. Fla. 1997).

Moreover, the named Plaintiffs do not appear to have interests antagonistic to the remainder of the class. They share typical claims and common questions of law or fact, and will receive the same treatment as the proposed class members under the Settlement Agreement's process to adjudicate I-829s. Thus, there is no apparent conflict of interest.

Accordingly, representation of the interests of the proposed class members is adequate.

B. Rule 23(b) Requirements

In addition to satisfying the mandatory prerequisites in Rule 23(a), Plaintiffs must also demonstrate that they meet one of the alternative requirements under Rule 23(b).

Here, certification under Rule 23(b)(2) is appropriate. Rule 23(b)(2) requires a showing that Defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2557; Fed. R. Civ. P. 23(b)(2). "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant." *Wal-Mart Stores, Inc.*, 131 S. Ct. at 2557.

Plaintiffs have adequately alleged that Defendant engaged in misconduct equally applicable to all proposed class members. Defendant's alleged improper retroactive application of the Precedent Decisions and other alleged affirmative misconduct, therefore, constitutes a regulatory scheme common to all members of the class. Further, the Settlement Agreement contemplates that we order Defendant to adjudicate the class's I-829s according to the Settlement's terms. If we enter such Order, it will create an I-829 adjudication process that provides relief for each member of the class. This action therefore involves "injunctive relief" for which 23(b)(2) certification is proper.

The Settlement Agreement's proposed class meets all the requirements for class certification under FRCP 23(a) and 23(b)(2). Accordingly, we **conditionally CERTIFY the class** for purposes of settlement.

III. Preliminary Approval of Settlement

After considering all the relevant factors and the special nature of this case, we conclude that the proposed settlement is within the range of approvable settlements. Accordingly, the Parties' Joint Motion for Preliminary Approval is **GRANTED**. The final Fairness Hearing is scheduled for Monday, **January 14, 2013 at 9:00 a.m.**

IV. Conclusion

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In light of the foregoing, we conditionally **CERTIFY** the proposed class for purposes of settlement. Further, the Parties' Joint Motion for Preliminary Approval is **GRANTED**.

IT IS SO ORDERED.

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