UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CHANG,Wen-Wan, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	No. CV 99-10518-GHK (AJWx) SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is entered into by and between Named Plaintiffs BUHLER, Albrecht; CHUANG, Hui Yu; CHUANG, Yu Te; HSU, Yu Fang; HUANG, Bi Chen; HUANG, Ta Lun; HUANG, Ta You; HUR, Kyu; HUR, Kyung Hwa; HUR, Myung Ok; HUR, Yool; KIM, Chung Nam; KONG, Sung Duck; KUO, Chin Hsin; LIN, Chin Ching; LIN, Ko Ting; LIN, Szu Yin; SU, Chun Chen; SU, Po-Lin; and SU, Po-Wei (the "Named Plaintiffs") and the Class (defined in Section II.A. below) (collectively, "Plaintiffs") and Defendant the United States of America ("Defendant") (together with the Plaintiffs, the "Parties"), with reference to the facts recited herein.

I. RECITALS

WHEREAS:

Plaintiffs' Participation in the EB-5 Program

1. The employment creation immigrant visa ("EB-5") originated with the Immigration Act of 1990 ("IMMACT 90"), Public Law No. 101-649, and was intended to permit aliens to immigrate to the United States upon investment of a designated amount of capital in a new commercial enterprise that would benefit the United States economy and create at least ten qualifying jobs;

2. The EB-5 program was expanded by Public Law No. 102-395, which introduced a temporary "pilot program" for capital investments in designated "Regional Centers";

3. Admission to the United States under the EB-5 program is conditioned upon making and sustaining the investment in the new commercial enterprise and demonstrating that

the requisite number of qualifying jobs have been created or are expected to be created within a reasonable time;

4. In the mid-1990s, Plaintiffs sought to participate in the program through a series of investment vehicles in the expectation of qualifying for an immigration benefit;

5. Each of the Plaintiffs filed a Form I-526, Immigrant Petition by Alien Entrepreneur ("Form I-526"), and each petition was approved by the former Immigration and Naturalization Service ("INS") (succeeded here by U.S. Citizenship and Immigration Services ("USCIS"));

6. American Immigration Services ("AIS") was a private corporation that had recruited Plaintiffs and channeled their investments into limited partnerships; and

7. Although the INS considered the Plaintiffs' proposed investments to be acceptable under the EB-5 program at the outset, and approved them as such, the INS ultimately issued a series of administrative precedent decisions[1] (the "1998 precedent decisions") holding that the type of investments that Plaintiffs made were unacceptable under the EB-5 laws.

The Litigation

8. Plaintiffs filed the pending lawsuit, captioned *Chang, et al. v. United States*, Case No. 99-cv-10518 (C.D. Cal.) (the "Action"),[2] against Defendant the United States of America on October 12, 1999, contending that reliance upon the 1998 precedent decisions represented an impermissible and retroactive application of law impacting their eligibility for removal of the conditions from their residence;

9. On May 4, 2001, the District Court dismissed as unripe the claims of all Plaintiffs but one, and denied the Defendant's motion for judgment on the pleadings as to that Plaintiff's retroactivity claims. Both Plaintiffs and Defendant appealed the order to the United States Court of Appeals for the Ninth Circuit;

10. The Ninth Circuit determined that rules announced in the 1998 precedent decisions could not be applied to the adjudication of Plaintiffs' Forms I-829, Petition to Entrepreneur to Remove Conditions ("Form I-829" or "Form I-829 Petition") and remanded the Action to the District Court to determine whether Plaintiffs had complied with the investment plan described in their Forms I-526 and whether a class should be certified. *See Chang v. United States*, 327 F.3d 911 (9th Cir. 2003);

11. On remand to the District Court, Plaintiffs amended their claims to include equitable estoppel theories asserting that Plaintiffs had made their investment plans relying on the approval of their I-526s, agency policy memoranda, and other INS decisions, assertions from

[1] *Matter of Ho*, 22 I. & N. Dec. 206 (Assoc. Comm'r 1998); *Matter of Hsuing*, 22 I. & N. Dec. 201 (Assoc. Comm'r 1998); *Matter of Izummi*, 22 I. & N. Dec. 169 (Assoc. Comm'r 1998); *Matter of Soffici*, 22 I. & N. Dec. 158 (Assoc. Comm'r 1998).

[2] *Chang* was consolidated with *Ahn v. United States*, Case No. 01-cv-07382 (C.D. Cal.).

high-level INS officials that the investment plans were permissible, and that the passage of time and the intervening administrative precedent decisions had caused the Plaintiffs to abandon their efforts to comply with the investment plans contained in their Forms I-526;

12. On October 14, 2005, the District Court approved the Parties' stipulation regarding certification of a Class, as defined in section II.A of this Agreement;

13. The Action remains pending before the District Court, and several legal and factual issues remain in dispute; and

14. USCIS contends that it cannot approve Plaintiffs' Forms I-829 because Plaintiffs abandoned their efforts to comply with their investment plans and, therefore, have not complied with the statutory and regulatory requirements for removal of conditions. Plaintiffs dispute that position and argue they have complied with the approved investment plans and, in the alternative, were prevented from complying with the investment plans by INS.

Benefits of Settlement

15. The Parties recognize the need to draw to a close litigation of this Action, which has been pending for over a decade, and desire to resolve the Action by entering into this Agreement, thereby avoiding the time and expense of further litigation;

16. Plaintiffs, in consultation with their counsel, have determined that this Agreement is fair, reasonable, adequate and in the best interests of Plaintiffs; and

17. Defendant denies that it has committed any act or omission giving rise to any liability, and denies any wrongdoing or that grounds for equitable estoppel exist, and states that it is entering into this Agreement solely to eliminate the uncertainties, burden and expense of further protracted litigation. By entering into this Agreement, Defendant does not admit any factual allegations against it; does not admit having violated any law, whether constitutional or statutory, federal or state; and does not admit having violated any regulation or administrative case law.

II. TERMS AND SCOPE OF AGREEMENT

NOW THEREFORE in recognition that the Parties and the interests of justice are best served by concluding the litigation, s*ubject to the Court's approval and entry of an order consistent with this Agreement, it is hereby stipulated and agreed by and between the undersigned Parties, through counsel, as follows.*

A. Definitions.

1. Action. "Action" means the consolidated lawsuit of *Chang v. United States,* No. 99-10518 (C.D. Cal.), and *Ahn v. United States*, Case No. 01-cv-07382 (C.D. Cal.).

2. Class. The definition of the "Class" is as follows:

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.

3. Class counsel. "Class counsel" means counsel appointed to represent the Class in accordance with Federal Rule of Civil Procedure 23(g).

4. Class member. "Class member" means a member of the Class.

5. Court. "Court" means the District Court in *Chang, et al. v. United States*, Case No. 99-cv-10518 (C.D. Cal.).

6. Fairness Hearing. "Fairness Hearing" means the hearing required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2) and described at Section II.B.9. of this Agreement.

7. Preliminary Approval. "Preliminary Approval" means that the Court has granted the Parties' Joint Motion for Preliminary Approval of Settlement as described in section II.B.2 of this Agreement and ordered a Fairness Hearing.

B. Conditions and Approval of Settlement.

1. Effective Date of Agreement. This Agreement will become effective upon execution of the Agreement by all Parties and Preliminary Approval of the settlement.

2. Submission of the Settlement Agreement to Court for Preliminary Approval. Within fifteen (15) days after execution of this Agreement, the Parties shall apply to the Court for Preliminary Approval of the settlement. The Parties shall file a Joint Motion for Preliminary Approval and Request for a Fairness Hearing, and shall attach a copy of this Agreement, the proposed Motion to Order Adjudication of Form I-829 Petitions in the form of Exhibit [A] hereto, the proposed Notice to the Class, in the form of Exhibit [B] hereto, and such other documents that the Parties determine are necessary for the Court's consideration. The parties further agree to file by that same time a joint motion to stay proceedings pending the Court's consideration of the matter.

3. Motion to Order Adjudication of Form I-829 Petitions. Provided the Court determines after a fairness hearing that this agreement is fair, reasonable, and adequate, within

five (5) days after the Court's approval of this agreement, Plaintiffs will file a Motion to Order Adjudication of Form I-829 Petitions with the Court in the form of Exhibit [A] to this Agreement requesting that Defendant be ordered as a matter of equity in light of Plaintiffs' prior efforts to satisfy the criteria of the EB-5 classification to approve the Form I-829 petitions of all Plaintiffs, except where the Defendant determines by clear and convincing evidence that in an individual case a Plaintiff made a willful material misrepresentation in his or her Form I-829 Petition or that a Plaintiff's investment was made solely as a means of evading the immigration laws of the United States, in which case the Form I-829 Petition may be denied for that individual Plaintiff. Defendant will not object to the Motion to Order Adjudication of Form I-829 Petitions. The Parties agree to move jointly to stay further proceedings in the Action pending the Court's consideration of the Motion to Order Adjudication, and, if the Motion is approved, pending completion of the activities described in section II.B.6(a)-(g) of this Agreement.

4. Effect of the Court's Denial of the Agreement. If the Court rejects this Agreement, or otherwise finds that the Agreement is not fair, reasonable, and adequate, this Agreement shall become null and void.

5. Effect of Court's Denial of Motion to Order Adjudication of Form I-829 Petitions. If the Court denies Plaintiffs' Motion to Order Adjudication of Form I-829 Petitions described in Section II.B.3, this Agreement shall become null and void.

6. Defendant's Adjudication of Form I-829 Petitions Pursuant to Court Order:

(a) Subject to the Court's order granting Plaintiffs' Motion to Order Adjudication of Form I-829 Petitions, Defendant agrees to favorably adjudicate each Plaintiff's Form I-829s within one hundred twenty (120) days of the date identified in section 6(a)(i) below, and subject to the following provisions:

(i) The 120-day time period for adjudicating each Form I-829 petition begins on the day after a Plaintiff appears at a designated office and provides his or her biometric information for purposes of any required background check. However, if Defendant does not mail a request to Plaintiff to appear before USCIS to capture his or her biometric information, mailed pursuant to the procedures set forth in section 6(b)(i) below, within 15 days of receipt of Plaintiffs' current mailing addresses pursuant to section 6(b)(i) below, Defendant must adjudicate the I-829 petition within one hundred twenty (120) days of the receipt of Plaintiff's current mailing address, or if applicable, within the timeframe specified for reasonable cause determinations in section 6(b)(ii) below.

(ii) Defendant shall grant these Form I-829 petitions unless it determines by clear and convincing evidence that the petitioner made a willful material misrepresentation on his or her Form I-829, in the evidence supporting his or her Form I-829 petition, or the evidence establishing the initial source of funds; or that the petitioner's investment was knowingly made solely as a means of evading the immigration laws of the United States.

(iii) The term "material misrepresentation" shall be defined consistent with *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (Att'y Gen. 1961).

(iv) Any finding by USCIS of a willful material misrepresentation referenced by (ii) above, or any finding by USCIS of a knowing evasion of the immigration laws referenced by (ii) above will be limited to the administrative record in connection with Plaintiffs' Form I-829 petitions or the initial source of funds at the time of the Form I-829 adjudication and conducted in a manner consistent with the requirements of 8 C.F.R. § 103.2(b)(16), as codified in the 2012 edition of the Code of Federal Regulations.

(v) Although USCIS may deny a Form I-829 petition consistent with section 6(a)(ii)-(iv), USCIS will not attribute to a Plaintiff any misrepresentation by AIS, or by anyone acting on behalf of AIS, including, but not limited to, any representation or documentation submitted with Plaintiffs' I-526s or I-829s regarding the business plan, release of funds, promissory notes, or amount of funds invested as those and other documents and representations relate to the investment, job creation or partnerships, unless the administrative record indicates that the Plaintiff knew of the misrepresentation and knowingly participated in the misrepresentation. Defendant shall not deem Plaintiffs' abandonment of their efforts to comply with the investment plans or job creation as set forth in their Forms I-526 or Forms I-829 as a material misrepresentation.

(vi) USCIS's grant of an I-829 petition shall not limit the Government's ability to institute removal proceedings against any alien in the event the alien is removable or deportable under 8 U.S.C. § 1227, or inadmissible under 8 U.S.C. § 1182, provided the Government's initiation of removal proceedings is otherwise in compliance with the Immigration and Nationality Act, as amended, and this Agreement.

(vii) Subject to the "pattern and practice" provision in this Agreement, Plaintiffs may seek relief from the district court upon a showing that USCIS has improperly applied section 6(a)(i-vi).

(viii) The conditional resident spouse or child of a principal investor, who is a plaintiff class member, whether the spouse is currently married to or divorced or widowed from the principal investor, and whether or not the child is now over 21 or married, shall have the condition removed on his or her residency under the terms and conditions set forth in this agreement whether or not the principal investor died or seeks removal of his or her conditional residency.

(b) In the event the Government alleges when adjudicating a Plaintiff's Form I-829 that a Plaintiff engaged in a willful material misrepresentation or made an investment in the commercial enterprise solely as a means of evading the immigration laws of the United States, the Government will provide to the Plaintiff a Notice of Intent to Deny (NOID) detailing the factual and legal basis for its claim that a willful material misrepresentation or a knowing

evasion of the immigration laws has occurred and shall comply with the notice requirement described in Public Law No. 107-273, Div. C, Title I, Subtitle B, § 11031(c)(1)(F)(i) (Nov. 2, 2002). The Government will provide the Plaintiff with ninety (90) days from the date of the notice to rebut the derogatory information or otherwise provide evidence that the Government's allegation of a willful material misrepresentation or willful evasion of the immigration laws is incorrect. Plaintiff's response must be delivered within the 90-day response period to the address identified in the Government's NOID. In response to a NOID, a Plaintiff may file any evidence that he or she finds appropriate and such evidence will be included in the administrative record. The adjudication of the I-829 will be based on the administrative record which will be comprised of the I-829 application and any documentation submitted in support of the application, any documentation the government provides to Plaintiff in conjunction with any NOID, and any response documents and argument submitted by the Plaintiff in response to any NOID.

i. Within 30 days after the Court approves this Agreement, all Plaintiffs will provide USCIS with their current mailing address, sent to the following: **changclasssettlement@uscis.dhs.gov**. In the event any Plaintiff changes his or her place of residence, he or she agrees to provide USCIS with the new address sent to the following: **changclasssettlement@uscis.dhs.gov**. In the event a Plaintiff fails to provide his or her current mailing address, as provided in this section, Defendant may mail any notices to the last address previously provided by that Plaintiff and such notice shall be deemed sufficient for purposes of this agreement and for purposes of calculating the 180-day time period described in section 6(b)(ii) below.

ii. In the event a Plaintiff fails to provide his or her biometric information within 180 days of USCIS's request in writing for such information, Plaintiff shall be deemed to have abandoned his or her Form I-829 and USCIS may deny the Form I-829. However, if, within 180 days of any denial for lack of submission of the biometric information, Plaintiff provides reasonable cause for failure to appear for the taking of biometrics, the denial will be vacated, and USCIS will mail Plaintiff a new biometric request within 15 days of USCIS's reasonable cause determination. USCIS will make the reasonable cause determination within 30 days of the receipt of Plaintiff's reasonable cause claim. USCIS will then adjudicate the Form I-829 according to the timeframe and procedures in section 6(a)(i) above.

iii. If Plaintiff fails to respond to the Government's NOID within ninety (90) days, the Government will deny, within thirty (30) days of the expiration of the 90-day time period to respond, the Plaintiff's Form I-829. In the event a Plaintiff's failure to respond is due to circumstances beyond the control of the Plaintiff, he or she will file a request to consider a late filed response with USCIS setting forth the reasons for the untimely filing along with evidence in response to the NOID. USCIS may consider the untimely filed response and may provide relief from the denial of the Plaintiff's Form I-829, but the Plaintiff shall not seek administrative or judicial review of the Government's

determination not to accept an untimely response. In no case may a Plaintiff file a request to consider a late filed document more than 180 days after the date a response to the original NOID was due.

iv. If Plaintiff's rebuttal to the Government's NOID fails to cause the Government to reverse its finding of a willful material misrepresentation or finding that the investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States, the Government will deny Plaintiff's Form I-829 within 60 days of receipt of the response, and place Plaintiff and his or her spouse and children, if any, into removal proceedings by issuing a Notice to Appear within thirty (30) days thereafter. Plaintiff may request a review of the Government's willful material misrepresentation finding or finding that the investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States in removal proceedings, as provided under Public Law No. 107-273, Div. C, Title I, Subtitle B, § 11031(d) (Nov. 2, 2002) . The Government shall have the burden of proof in the proceeding. If the government does not deny the I-829 within the 60 days of receipt of the NOID response, the I-829 will be deemed approved as of the 61st day from receipt of the NOID response.

v. The Government may deny any Plaintiff's Form I-829, and may place any Plaintiff and his or her spouse and children in removal proceedings, in accordance with the terms of this agreement notwithstanding section 11033 of Public Law No. 107-273, Div. C, Title I, Subtitle B (Nov. 2, 2002), and Plaintiffs waive any rights or benefits under Public Law No. 107-273, Div. C, Title I, Subtitle B (Nov. 2, 2002), except as otherwise provided in this Agreement. DHS shall continue the conditional basis of the Plaintiff's permanent resident status (and that of the Plaintiff's spouse and children) at least during the pendency of a direct administrative appeal of a final removal order arising from such removal proceedings.

(c) The Parties agree that a denial of a Plaintiff's I-829 based on the Government's finding of a material misrepresentation or knowing evasion of the immigration laws may be reviewed in removal proceedings, as provided under Public Law No. 107-273, Div. C, Title 1, Subtitle B, §11031(d) (Nov. 2, 2002), and 8 U.S.C. § 1186b(b)(2). Each Plaintiff may also exercise his right to any administrative appellate review that may be available to a Plaintiff with the Board of Immigration Appeals. The Parties further agree that judicial review of a Plaintiff's final order of removal is limited to a petition for review with the appropriate circuit court of appeals, as provided under 8 U.S.C. § 1252, except that the district court in this case shall retain jurisdiction to review any pattern or practice violation by Defendant of Plaintiffs' rights under this agreement.

(d) Following approval of a Plaintiff's Form I-829, the Defendant shall remove the conditions from the Plaintiff's lawful permanent resident status, and Plaintiff will enjoy all the rights and duties that unconditional status entails. Consistent with that status, Defendant agrees

not to seek to exclude, deport, or remove any Plaintiff for failure to satisfy the requirements of the EB-5 program based on evidence available at the time of adjudication of Plaintiff's Form I-829. In adjudicating Plaintiffs' applications for naturalization, the Defendant will consider the removal of conditions consistent with the terms of this Agreement to satisfy the requirement of 8 U.S.C. § 1429 that an applicant for naturalization "has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions" of the INA. Defendant may deny a Plaintiff's application for naturalization, seek exclusion, deportation, or removal of a Plaintiff or take any other action under the INA or the criminal laws of the United States based on any ground of inadmissibility, deportability, or removability under the INA, except as to any matter arising out of or directly relating to the Plaintiff's approved Form I-526 or Form I-829. Any Plaintiff, including his or her spouse and children, whose N-400 application has been denied may refile a new N-400 application, but no Plaintiff, including his or her spouse and children, shall be required to submit a new filing fee for the filing, receipt, or adjudication of the new N-400 application. Defendants shall not adjudicate any Plaintiff's pending N-400 application while his or her I-829 is pending, and Defendant shall not deny a pending N-400 application on the ground that the Plaintiff was not eligible to file for naturalization as a conditional permanent resident.

(e) Any Plaintiff whose Form I-829 Petition is denied pursuant to the Court's order and section II.B.6(c) of this Agreement shall retain only those administrative appellate and judicial review rights provided under section II.B.6(b), (c) and (d) of this Agreement. Except as provided in this Agreement, Plaintiffs waive any recourse to the remedies provided in Public Law No. 107-273, Div. C, Title I, Subtitle B, §§ 11031-34 (Nov. 2, 2002).

(f) Each and every Plaintiff shall waive his or her right to assert any and all claims that have previously been asserted against the Defendant in the Action. An individual Plaintiff may only challenge USCIS's finding of a willful material misrepresentation or a knowing evasion of the immigration laws made pursuant to this agreement in administrative proceedings and through a petition for review of a final order of removal filed with the appropriate court of appeals, as provided in section II.B.6(c).

(g) Upon Defendant's completion of the adjudication of all Plaintiffs' Form I-829 Petitions, Plaintiffs will file with the Court a motion to dismiss the Action with prejudice, within twenty-one (21) days after Defendant certifies that it has adjudicated all of Plaintiffs' Form I-829 Petitions. The Court shall retain jurisdiction to review requests to enforce the terms of this Agreement pursuant to section II.B.6(c) above.

7. Plaintiffs' Waiver of Any and All Attorney's Fees and Costs.

Plaintiffs, individually and on behalf of their heirs, representatives, and successors hereby release and forever discharge Defendant and its officers, agents, representatives, employees, attorneys, predecessors, successors, and assigns from any and all claims and demands for attorneys' fees and litigation costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other fee-shifting statute, for this Action and any related prior litigation, including but not limited to *Ahn v. United States*, No. 01-cv-07382 (C.D. Cal.), and all district court and court of appeals litigation culminating in *Chang v. United States*, 327 F.3d 911 (9th Cir. 2003). However, should Plaintiffs

need to seek assistance from the Court to enforce compliance with the terms of this Agreement pursuant to section II.B.6(c) above and prevail in such an action, Plaintiffs shall be entitled to seek an award of fees and costs related to the proceedings to enforce this agreement from the Court under the standards set forth in the Equal Access to Justice Act.

8. Waiver of Appeal. If the Court enters an order granting Plaintiffs' Motion to Order Adjudication of Form I-829 Petitions, Plaintiffs and Defendants both agree to waive appeal of the order, subject to the Parties' reservations of rights described in section II.B.6 of this Agreement.

9. Fairness Hearing. At the Fairness Hearing, the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate and binding on all Plaintiffs.

10. Objections to Settlement. Within seven (7) days following the Court's Preliminary Approval of the Agreement, Plaintiffs' counsel will issue to all class members the Notice to the Class, attached in the form of Exhibit B of this Agreement. Within thirty (30) days of issuance of the Notice to the Class, any Plaintiff who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Plaintiff, and whether the Plaintiff intends to appear at the Fairness Hearing. The parties will have thirty (30) days following the objection period in which to submit answers to any objections that are filed. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District Court for the Central District of California, 312 North Spring Street, Los Angeles, CA 90012, and both the envelope and letter shall state "Attention: *Chang v. U.S.*, Case No. CV 99-10518-GHK (AJWx)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set forth in the Notice to Class, Exhibit B. If any Plaintiff wishes to opt out of the class and, thus, the settlement, he or she must submit a letter or postcard to class counsel (Mr. Ira Kurzban, 2650 SW 27th Avenue, Miami, Florida 33133) within 30 days of issuance of the Notice to the Class.

11. Final Approval. The Court's Final Approval of the settlement set forth in this Agreement shall consist of its orders granting each of the Parties' requests made in connection with the Fairness Hearing, as described in section II.B.9 of this Agreement, and its order granting Plaintiffs' motion to dismiss the Action with prejudice, except for those aspects of the case over which the Court shall retain jurisdiction as set forth in this Agreement.

C. Miscellaneous Provisions.

1. Entire Agreement. This Agreement, including the Exhibit(s), constitutes the entire agreement between the Parties with respect to the Action and claims released or discharged by the Agreement, and supersedes all prior discussions, agreements and understandings, both written and oral, among the Parties in connection therewith.

2. No modification. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendant.

3. Full and Final Settlement. The Parties intend that the execution and performance of this Agreement shall, as provided above, be effective as a full and final settlement of and shall fully dispose of all claims and issues that Plaintiffs raise against Defendant in the Action. The Parties acknowledge that this Agreement is fully binding upon them during the life of the Agreement.

4. Notices. All notices required or permitted under or pertaining to this Agreement shall be in writing and delivered by any method providing proof of delivery. Any notice shall be deemed to have been completed upon mailing. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

TO PLAINTIFFS:

Ira J. Kurzban
Kurzban, Kurzban, Weinger Tetzeli & Pratt, PA.
2650 S.W. 27th Ave., 2d Floor
Miami, FL 33133

Marc Van Der Hout
Van Der Hout, Brigagliano & Nightingale, LLP
180 Sutter Street, 5th Floor
San Francisco, CA 94104

TO DEFENDANT:

Geoffrey Forney
Senior Litigation Counsel
United States Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001

5. Opportunity to Review. The Parties acknowledge and agree that they have reviewed this Agreement with legal counsel and agree to the particular language of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, interpretation of the Agreement shall not be resolved by any rule providing for interpretation against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party hereto participated in the drafting hereof.

6. Construction of Agreement. This Agreement involves compromises of the Parties' previously stated legal positions in connection with the Action. Accordingly, this Agreement does not reflect upon the Parties' views as to the rights and obligations with respect to matters or persons outside of the scope of this Agreement.

7. Execution of Other Documents. Each party agrees to execute and deliver such other documents and instruments and to take further action as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

8. No Precedential Value. This Agreement is for the sole purpose of settling all claims in connection with the Action, and for no other purpose. Accordingly, the Parties agree that this Agreement, the negotiations surrounding the Agreement, and any evidence relating thereto shall not constitute, be construed as, or offered or received into evidence as, an admission of any wrongdoing by, or liability of, any Party hereto and shall not be admissible in any suit, action, administrative proceeding, or other proceeding, except as shall be necessary to enforce the terms of this Agreement.

9. Headings. The Parties agree the captions or underlined paragraph headings in this Agreement are included in the Agreement solely for the convenience of the Parties, are not part of the terms and conditions of the Agreement, and do not limit, alter, or otherwise affect the provisions of, and the Parties' rights and obligations under, this Agreement.

10. Compliance/Dispute Resolution. In the event that either party to this Agreement alleges that the other party has failed to comply with the terms of this Agreement, either with respect to the class or to an individual Plaintiff, the complaining party shall inform the other party in writing of the specific grounds upon which non-compliance is alleged. The party alleged to have failed to comply with the terms of the Agreement shall investigate the alleged non-compliance, take any appropriate steps required to resolve the non-compliance concerning each individual case, and report the results of such investigation, including what steps, if any, were taken to resolve the non-compliance, in writing to the other party's undersigned counsel within twenty (20) business days of the date on which the party alleged to have failed to comply with the Agreement was notified. The parties agree to make good faith attempts to resolve all issues informally; however, if the dispute cannot be resolved informally within thirty (30) days of the date on which the party alleged to have failed to comply with the Agreement was notified of the alleged non-compliance, either party may apply to the Court for enforcement of the Agreement, inform the Court of their disagreement, and seek mediation of any dispute through the Court's auspices. If, within seven (7) days following a scheduled mediation session, the parties have resolved any issue regarding non-compliance, the complaining party must provide the other party a written statement that the issue has been resolved. If, within seven days following a scheduled mediation session, the parties have not resolved any issue regarding non-compliance, either party may apply to the Court for enforcement of the Agreement, but in no case shall either party seek contempt or sanctions to enforce the Agreement.

11. Applicable Law. This Agreement shall be interpreted in accordance with the laws of the United States without respect to the law of any particular State.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which may be executed in counterparts and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective Parties.

Consented and agreed to by:

s/ Ira J. Kurzban Date: August 13, 2012
Ira J. Kurzban
Kurzban, Kurzban, Weinger Tetzeli & Pratt, PA.
2650 S.W. 27th Ave., 2d Floor
Miami, FL 33133

s/Marc Van Der Hout Date: August 13, 2012
Marc Van Der Hout
Van Der Hout, Brigagliano & Nightingale, LLP
180 Sutter Street, Fifth Floor
San Francisco, CA 94104

Counsel for Plaintiffs

Stuart F. Delery
Acting Assistant Attorney General

William H. Orrick, III
Deputy Assistant Attorney General

s/ Geoffrey Forney Date: August 13, 2012
Geoffrey Forney
Senior Litigation Counsel
United States Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001

Counsel for Defendant

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

CHANG, Wen-Wan, et al., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	:	**Case No.: CV 99-10518-GHK(AJWx)**[1] **Motion to Order Adjudication of Form I-829 Petitions** **Before: Hon. George H. King** **Date:** **Time:**

Plaintiffs respectfully move the Court for an order requiring the Defendant as a matter of equity, in light of Plaintiffs' prior efforts to satisfy the criteria of the EB-5 immigrant investor visa classification, to adjudicate the pending Form I-829 petitions of all Plaintiffs. All petitions shall be approved except where the Defendant determines by clear and convincing evidence,

[1] The instant case has been consolidated with *Ahn v. United States*, Case No.: CV 01-07382-GHK(AJWx).

consistent with the attached Settlement Agreement in this case, that in an individual case:

(i) a petitioner made a willful material misrepresentation on his or her Form I-829, in the evidence supporting his or her Form I-829, or in the evidence establishing the initial source of funds; or

(ii) that a petitioner's investment was knowingly made solely as a means of evading the immigration laws of the United States,

in which case the Form I-829 Petition may be denied. All adjudications of Plaintiffs' I-829 Petitions shall be governed by the attached Settlement Agreement, which Plaintiffs respectfully request the Court to incorporate by reference in its order.

The Defendant does not object to this motion.

DATE:

Respectfully Submitted,

By:/s/Ira. J. Kurzban

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Attorneys for Plaintiffs

PROOF OF SERVICE

I, Ira J. Kurzban, the undersigned, say:

I am over the age of eighteen years and not a party to the within action or proceedings; my business address is: Kurzban, Kurzban, Weinger, Tetzeli & Pratt, P.A., 2650 S.W. 27th Avenue, 2nd Floor, Miami, Florida 33133.

On XXX, I served the within:

Proposed Motion to Order Adjudication of Form I-829 Petitions

on each person or entity named below by uploading an electronic version of this document to the Court's ECF system:

Attorney for Defendant

Office of Immigration Litigation
Civil Division
U.S. Department of Justice
450 5th Street, NW
Washington, D.C. 20001
Tel: 202-532-4329
E-Mail: Geoff.Forney@usdoj.gov

Executed on the XXX day of XXX, at Miami, Florida. I declare under penalty of perjury that the foregoing is true and correct.

By: /s/ Ira. J. Kurzban
Ira J. Kurzban, Esq.
Declarant

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

CHANG, Wen-Wan, et al.,
Plaintiffs,
v.

UNITED STATES OF AMERICA,
Defendant.

Case No.: CV 99-10518-GHK(AJWx)[2]

(PROPOSED) ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION TO ORDER ADJUDICATION OF FORM I-829 PETITIONS

Plaintiffs' unopposed Motion to Order Adjudication of Form I-829 Petitions is GRANTED. Defendant shall adjudicate all Plaintiffs' I-829 Petitions in accordance with the attached Settlement Agreement.

IT IS SO ORDERED.

Dated: XXX , 2012.

Hon. George H. King
United States District Judge

[2] The instant case has been consolidated with *Ahn v. United States*, Case No.: CV 01-07382-GHK(AJWx).

Date: October 10, 2012

Notice of Class Action and Proposed Settlement

To: Members of the "Settlement Class" which includes all aliens, plus derivative beneficiaries, who:

(i) invested in a designated American Immigration Services (AIS) Partnership; and
(ii) had an I-526 petition approved by the United States government after January 1, 1995, and before August 31, 1998; and
(iii) were granted conditional resident status pursuant to Immigration and Nationality Act (INA) section 203(b)(5); and
(iv) who timely filed, in accordance with INA section 216A(c)(1)(A), and before November 2, 2002, an I-829 petition requesting the removal of such conditional basis; and
(v) who have received or will receive a denial of their permanent residency by the United States because they are unable to comply with the investment and employment requirements under INA sections 203(b)(5) and 216A and existing regulations.

There is now pending in the United States District Court for the District of Central California a class action titled *Chang v. United States*, No. 99-10518 and *Ahn v. United States*, No. 01-07382. A settlement has been proposed in the class action which will provide for a new review of Settlement Class members' applications for lawful permanent residence. If you qualify as a Settlement Class member, you may participate in the new review, or you can exclude yourself from the settlement, or object to it.

The United States District Court for the Central District of California authorized this notice. Before any reviews are undertaken, the Court will have a "Fairness Hearing" to decide whether to approve the settlement. The hearing is scheduled for January 14, 2013 at 9:00 am before the Honorable George H. King, Chief Judge of the United States District Court, Central District of California in Court Room 650 at 255 East Temple Street, Los Angeles, CA 90012.

What This Action Is About

Plaintiffs filed the pending lawsuit against Defendant the United States of America on October 12, 1999, contending that the government could not rely on administrative decisions issued after their applications for lawful permanent residence were filed to deny them immigration benefits. Plaintiffs subsequently amended their claims to assert that they made their investments relying on government actions and assurances that their investment plans were permissible, and that the passage of time and the intervening administrative decisions caused Plaintiffs to abandon their efforts to comply with the investment plans. On October 14, 2005, the District Court approved the definition of the Settlement Class. The class action remains pending before the District Court.

The Proposed Settlement

The parties have agreed to the settlement generally described below. If the settlement is finally approved, the following benefits will result:

(a) The parties will ask the Court to order the new reviews to begin. The United States agrees to abide by a Court order to adjudicate each Plaintiff's pending Form I-829 petition favorably within one hundred and twenty (120) days of the day after a Plaintiff appears at a designated office and provides his or her biometric information for purposes of any required background check. Favorable adjudication is subject to the following provisions:

(i) The United States shall grant these petitions unless it determines by clear and convincing evidence that a petitioner made a willful material misrepresentation on his or her Form I-829, in the evidence supporting his or her Form I-829, or in the evidence establishing the initial source of funds; or that

(ii) the petitioner's investment was knowingly made solely as a means of evading the immigration laws of the United States.

The United States will not attribute to a Plaintiff any misrepresentation by AIS, or by anyone acting on behalf of AIS, including, but not limited to, any representation or documentation submitted with Plaintiffs' I-526s or I-829s regarding the business plan, release of funds, promissory notes, or amount of funds invested as those and other documents and representations relate to the investment, job creation or partnerships, unless the administrative record indicates that the Plaintiff knew of the misrepresentation and knowingly participated in the misrepresentation.

Defendant shall not deem Plaintiffs' abandonment of their efforts to comply with the investment plans or job creation as set forth in their Forms I-526 or Forms I-829 as a material misrepresentation.

(b) In the event the United States alleges a willful material misrepresentation or knowing evasion of the immigration laws of the United States, the United States will provide to the affected Plaintiff a Notice of Intent to Deny detailing the factual and legal basis for its claim. The United States will provide the Plaintiff with ninety (90) days from the date of the notice to rebut the derogatory information or otherwise provide contrary evidence.

(c) The United States' final denial of a Plaintiff's I-829 may be reviewed in removal proceedings, with the possibility of appeal to the Board of Immigration Appeals (BIA). A Plaintiff may further appeal to the appropriate U.S. Court of Appeals if the BIA issues an adverse decision. The District Court may review any pattern or practice violation by the United States of Plaintiffs' rights under the settlement agreement. The United States shall continue the conditional basis of a Plaintiff's permanent resident status (and that of the Plaintiff's spouse and children), at least during the pendency of a direct administrative appeal of a final removal order arising from such removal proceedings.

(d) Following approval of a Plaintiff's Form I-829, the United States shall remove the conditions from the Plaintiff's lawful permanent resident status, and the Plaintiff will enjoy all the rights and duties that unconditional status entails. Consistent with that status, the United States agrees not to seek to exclude, deport, or remove any Plaintiff for failure to satisfy investment requirements based on evidence available at the time of adjudication of the Plaintiff's Form I-829. In adjudicating Plaintiffs' future applications for naturalization, the United States will consider the removal of lawful permanent resident conditions to satisfy the requirement of INA § 318 that an applicant for naturalization "has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions."

(e) The United States will hold any Plaintiff's application for citizenship (N-400 naturalization applications) if it is pending until the Plaintiff becomes an unconditional lawful permanent resident. For those Plaintiffs whose applications for naturalization were denied previously, they will be allowed to refile the applications without an additional fee.

In return for these benefits, all Plaintiffs who do not exclude themselves from the settlement will waive their rights to assert any and all claims that have previously been asserted against the United States in the class action (an individual Plaintiff may only challenge the United States' finding, under the settlement agreement, of a willful material misrepresentation or a knowing evasion of the immigration laws).

Attorneys' Fees and Costs

As a condition of settlement, the Settlement Class will forego all claims and demands for attorneys' fees and litigation costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other fee-shifting statute, for the class action and any related prior litigation. However, should any Plaintiff need to seek assistance from the District Court to enforce compliance with the terms of the settlement agreement and prevail, Plaintiff shall be entitled to seek an award of fees and costs related to the proceedings to enforce the agreement from the Court under the standards set forth in the Equal Access to Justice Act.

Fairness Hearing

On January 14, 2013 at 9:00 am a hearing will be held before the Honorable George H. King, Chief Judge of the United States District Court, Central District of California in Court Room 650 at 255 East Temple Street, Los Angeles, CA 90012 to determine whether the proposed settlement is fair, reasonable and adequate. At the hearing, the District Court will consider any objections and arguments concerning the fairness of the proposed settlement.

What You Can Do

You have the right to exclude yourself from both the class action and the settlement:

•*If you wish to be excluded from the Settlement Class*: you must submit a letter or postcard postmarked no later than 30 days from the date of this notice, with your name, address, and telephone number. To be considered valid, a request for exclusion must set forth all of this information and must be timely received. Your request must be sent to class counsel at the following address:

Ira J. Kurzban
Kurzban, Kurzban, Weinger, Tetzeli & Pratt, PA.
2650 S.W. 27th Ave., 2d Floor
Miami, FL 33133

If you wish to exclude yourself from the Settlement Class, you are advised that you will receive none of the benefits of the proposed settlement and will need to litigate any further claims on your own. You are also advised that the attorneys who have represented the class to date believe that this is a beneficial settlement for the class which represents an excellent opportunity to secure permanent residency for most class members and their derivative spouses and children, if any. If you timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by the judgment entered in the class action, and you will not be precluded from otherwise prosecuting any individual claim, if timely, against the United States.

•*If you object to the settlement, but do not wish to exclude yourself from the class action*: you may intervene in the class action and/or object to the terms of the settlement. If your objection is rejected, you will be bound by the final judgment just as if you had not objected.

Any Settlement Class member who wishes to object to the fairness, reasonableness, or adequacy of the proposed settlement must file within thirty (30) days of this Notice's issuance date, with the Clerk of Court of the United States District Court for the Central District of California, and serve on the Parties a statement of objection, setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Plaintiff, and whether the Plaintiff intends to appear at the Fairness Hearing. The parties will have thirty (30) days following the objection period in which to submit answers to any objections that are filed. Your notice setting for the your objections shall be sent to counsel for the parties and to the Clerk, U.S. District Court for the Central District of California.

Your Notice of Objections, should be sent to all the below and both the envelope and letter shall state Attention: Chang v. U.S, Case No. CV 99-10518-GHK (AJWx):

Clerk, U.S. District Court for the Central District of California,
312 North Spring Street, Los Angeles, CA 90012

TO PLAINTIFFS:

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Marc Van Der Hout
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TO DEFENDANT:

Geoffrey Forney
Senior Litigation Counsel
United States Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001

****Please do not address any questions about the settlement or the litigation to the clerk of the Court or to the judge****