The Honorable John H. Chun
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Bianey GARCIA PEREZ, Maria MARTINEZ CASTRO, J.M.Z., Alexander MARTINEZ HERNANDEZ, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Ur JADDOU, Director, U.S. Citizenship and Immigration Services; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Mary CHENG, Acting Director, Executive Office for Immigration Review,

Defendants.

Case No. 2:22-cv-00806-JHC

JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND REQUEST FOR FAIRNESS HEARING

NOTE ON MOTION CALENDAR:
July 29, 2024

The Parties hereby jointly file this motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The Parties jointly request that this Court:

1. Preliminarily approve the attached Settlement Agreement;
2. Preliminarily approve the attached proposed Class Notice; and
3. Set a Fairness Hearing on the Settlement Agreement no earlier than sixty (60) days from the date that the form and manner of the Class Notice is approved.

Attached as Exhibit 1 is the Parties' Settlement Agreement in which they propose a settlement of this case. A proposed order granting preliminary approval is attached as Exhibit A to the Settlement Agreement. The benefits provided by the Settlement Agreement to the Class

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members are described in the Class Notice, Exhibit B of the Settlement Agreement, at pages 3–5, and in more detail in the Settlement Agreement, at pages 11–15.

Pursuant to Rule 23(e), notice to the Class must be given before this Court can determine if the settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e). Rule 23(e) also provides that a settlement cannot be approved without a hearing to determine if the settlement is fair, reasonable, and adequate. *Id.* Exhibit B to the Settlement Agreement is the Parties' proposed Class Notice. The Parties request that this Court order the Class Notice to be given as proposed in Section II.B.2 of the Settlement Agreement, so that any objections to the Settlement Agreement may be received and addressed by the Court and the Parties at the proposed fairness hearing.

BACKGROUND

I. Summary of the Proceedings

On June 9, 2022, Plaintiffs Bianey Garcia Perez, Maria Martinez Castro, J.M.Z., and Alexander Martinez Hernandez, all noncitizens who filed a Form I-589, Application for Asylum and for Withholding of Removal ("Asylum Application") with U.S. Citizenship and Immigration Services ("USCIS") or the Executive Office for Immigration Review ("EOIR"), filed this complaint, on behalf of themselves and all others similarly situated. Complaint, Dkt. # 1. Plaintiffs allege that the policies and practices of Defendants unlawfully deny Plaintiffs Employment Authorization Documents ("EADs") when their Asylum Applications have been pending for more than 180 days.[1] *Id*. In the Complaint Plaintiffs set forth five counts. *Id*. ¶¶ 129–48.

[1] Congress authorizes the U.S. Department of Homeland Security to adopt regulations authorizing employment in the United States for noncitizens who have applied for asylum. 8 U.S.C. § 1158(d)(2). Congress further directs that asylum applicants may not be granted employment authorization prior to 180 days after they have filed their asylum application. *Id*. Under the relevant regulations, the 180-day clock ("Asylum EAD Clock") begins to run on the date the applicant files a complete Asylum Application. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1), 208.3(c)(3), 1208.3(c)(3), 208.4, 1208.4. The agency responsible for adjudicating all applications for employment authorization is USCIS, a component of DHS. An asylum seeker may file a Form I-765 Application for Employment Authorization ("Form I-765") with USCIS any time after the first 150 days of the 180-day waiting period. 8 C.F.R. § 208.7(a)(1). The Asylum EAD Clock stops during any period of "delay requested or caused by the applicant," 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2), or if the asylum application is denied before USCIS adjudicates the EAD application,

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Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
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Counts I and II: Notice to Asylum Applicants and Opportunity to Challenge Policy and Practice. In Count I, Plaintiffs claim that Defendants have a nationwide policy and practice of not providing written notice to asylum and withholding of removal applicants when their Asylum EAD Clocks are stopped, not started, or not restarted during removal proceedings, and of failing to provide a meaningful opportunity to contest Asylum EAD Clock determinations and EAD application denials and that the policy and practice deprive Plaintiffs of a benefit provided under law without due process, in violation of the Fifth Amendment. *Id.* ¶¶ 130-31. In Count II, Plaintiffs claim that Defendants fail to provide asylum and withholding of removal applicants with written notice or a meaningful opportunity to contest Asylum EAD Clock determinations and EAD denials and that this failure is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, citing 5 U.S.C. § 706(2). *Id.* ¶ 133.

Count III: Remand Policy and Practice. In Count III, Plaintiffs Garcia Perez and Martinez Castro and the Remand Subclass claim that Defendants have a nationwide Remand Policy and Practice dictating that the Asylum EAD Clock does not start or restart after a federal appeals court or the Board of Immigration Appeals ("BIA") has remanded their case and that the policy and practice are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, citing 5 U.S.C. § 706(2). *Id.* ¶¶ 134–38.

Count IV: Unaccompanied Children Policy and Practice. In Count IV, Plaintiff J.M.Z. and the Unaccompanied Children Subclass claim that Defendants have a nationwide policy and practice dictating that Asylum EAD Clocks will not start or continue running while asylum applications for Unaccompanied Children ("UCs") in removal proceedings are pending before USCIS, and that the policy and practice are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, citing 5 U.S.C. § 706(2). *Id.* ¶¶ 140–43.

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8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1). Applicant-caused delays include but are not limited to the applicant's "failure without good cause to follow the requirements for fingerprint processing" and a failure to appear in person to receive and acknowledge receipt of a USCIS asylum officer's decision. 8 C.F.R. §§ 208.7(a)(2), 208.9(d).

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Count V: Change of Venue. In Count V, Plaintiff Martinez Hernandez claims that Defendants have a widespread practice of stopping the Asylum EAD Clock where the venue for asylum and withholding applicants' removal proceedings is changed to another immigration court, and that this practice is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, citing 5 U.S.C. § 706(2). *Id.* ¶¶ 145–48.

Plaintiffs moved for class certification, Dkt. # 2, and a preliminary injunction, Dkt. # 3. Plaintiffs' allegations and claims are similar to those of the nationwide class in *ABT v. USCIS*, No. C11-2108 RAJ (W.D. Wash.).[2] In 2013, the *ABT* class and Defendants entered into a settlement agreement, in which Defendants agreed to specified changes to their processes and procedures that affect how they count the Asylum EAD Clock. *See* Order *ABT*, No. C11-2108 RAJ, 2013 WL 5913323 (W.D. Wash. Nov. 4, 2013) (approving ABT settlement agreement); Settlement Agreement, ECF No. 60-1 (May 6, 2013), No. C11-2108 RAJ, ("*ABT* Settlement"). By its terms, the *ABT* Settlement expired on May 8, 2019. *ABT* Settlement ¶¶ II.B.1 & C.14; Order, ECF No. 61 (May 8, 2013) (preliminarily approving settlement). Following the expiration date, Defendants removed safeguards they had implemented under the *ABT* Settlement.

On June 27, 2022—approximately two weeks after Plaintiffs filed the instant complaint—the Parties agreed to engage in settlement discussions and, to facilitate such discussions, sought to extend the due dates for Defendants to answer the complaint and respond to Plaintiffs' pending motions for class certification and injunctive relief. Since June 27, 2022, the Parties' counsel met

[2] The ABT class was defined as

> All noncitizens in the United States who meet all of the following criteria: (1) have filed or will file or lodge with Defendants a complete asylum application; (2) whose asylum applications have neither been approved nor subjected to a denial for which no rights of review or appeal remain; (3) whose applications for employment authorization have been or will be denied; (4) whose eligibility for employment authorization based on a pending asylum application will be determined in a manner that is alleged to provide insufficient notice and/or opportunity for review; and (5) who fall in one or more of [five enumerated subclasses]

ABT Settlement ¶ II.A.4.

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numerous times and have been filing joint status reports and stipulations to extend the due dates. *See* Dkt. ## 34, 37, 39, 41, 44, 46, 48, 50, 52, 55, 57, 59. The Court has granted the Parties' stipulations, thereby extending Defendants' deadlines and allowing the Parties time to negotiate the terms of a Settlement Agreement. *See* Dkt. ## 35, 38, 40, 42, 45, 47, 49, 51, 53, 56, 58, 60. While negotiations proceeded, Defendants, in consultation with Plaintiffs' counsel and consistent with the Parties' negotiations, began to design and implement changes to policies and practices that would resolve Plaintiffs' claims. By September 23, 2022, USCIS resolved Plaintiffs' claims alleging a policy and practice of not restarting the Asylum EAD Clock following a federal appeals court or the Board of Immigration Appeals ("BIA") remand of a case to Immigration Court. By October 14, 2022, EOIR largely resolved Plaintiffs' claims that Defendants' policy of stopping the Asylum EAD Clock when an asylum or withholding applicant in removal proceedings is granted a change of venue to another immigration court violates the law and is arbitrary and capricious. *See* Dkt. # 1 ¶¶ 145–48. By February 2023, EOIR began to resolve Plaintiffs' claims that they lacked notice of when their Asylum EAD Clocks have not started, stopped, or have not been re-started, and that the lack of notice and opportunities to contest such determinations amounted to a denial of due process, *see id*. ¶¶ 130–31, by beginning the work needed to upgrade its Courts & Appeals System ("ECAS") Case Portal to include case-specific adjournment code and Asylum EAD Clock information as part of the information available to respondents' representatives of record. Further, the Parties' counsel corresponded regarding the content of EOIR's and USCIS's website postings to ensure that information regarding the Asylum EAD Clock was available to Asylum Applicants and that the information is correct.

In June and September 2023, Plaintiffs' counsel sent Defendants demands for attorneys' fees and costs pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412. In the interest of achieving a comprehensive settlement and avoiding protracted litigation over fees, the Parties' counsel exchanged correspondence and met telephonically several times regarding fees. On January 18, 2024, the Parties agreed upon an amount of compensation, $163,508.50. This

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compromised amount is based on the number of hours each Plaintiffs' attorney expended on this matter, multiplied by the attorney-specific hourly rate and reflects the parties' interest in expeditious implementation of the agreed-upon settlement terms.

II. Summary of the Settlement Terms

The Parties have agreed to resolve all claims through the attached Settlement Agreement. *See* Ex. 1. The settlement terms are largely designed to provide class members notice regarding the status of their Asylum EAD Clocks, and of errors, if any, in the stopping or not starting or not re-starting their Asylum EAD Clocks, and opportunities to correct any errors. Some of the terms of the Settlement Agreement are similar to those in the *ABT* Settlement. The primary provisions of the Settlement Agreement are as follows.

Class Certification. For settlement purposes, the Parties agree to the certification of a nationwide class, defined as

> All noncitizens in the United States who have filed or will file with USCIS or EOIR a complete Asylum Application and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the applicant filed a complete Asylum Application.

The Parties agree to the certification of three subclasses, which are defined as

> **Remand Subclass.** Class members whose Asylum EAD Clocks were or will be stopped following a decision by an Immigration Judge and whose Asylum EAD Clocks are not or will not be started or restarted following an appeal in which either the BIA or a federal court of appeals remands their case for further adjudication of their asylum and/or withholding of removal claims.
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> **Unaccompanied Children Subclass**. Class members in removal proceedings who are unaccompanied children ("UCs") pursuant to 6 U.S.C. § 279(g) and whose Asylum EAD Clocks are not started or will be stopped while waiting for USCIS to adjudicate the filed Asylum Application.
>
> **Change of Venue Subclass**. Class Members in removal proceedings whose removal proceedings have been or will be transferred to a different Immigration Court through a granted change of venue motion, and for whom EOIR has stopped or will stop the Asylum EAD Clock based solely on the change of venue.

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Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
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Notice to the Class of the Settlement Agreement. The procedures for notifying class members and providing them an opportunity to object to this Settlement Agreement are set forth in Paragraph II.B.2 & 3 of the Settlement Agreement. The Parties propose that, if the Court issues an order granting preliminary approval of the Settlement Agreement, then, within 7 days of the Court's order, Defendants will post the Class Notice that is attached as Exhibit B to the Settlement Agreement (including a Spanish version) and the Settlement Agreement on their websites. In addition, EOIR will post at least one paper copy of the Class Notice (including a Spanish version) on a bulletin board, or other similar location, in the waiting room of each immigration court. Additionally, Plaintiffs' Counsel will post the Class Notice (including a Spanish version) and Settlement Agreement on their organizational websites and will share the Class Notice with national immigration listservs.

The Parties have agreed that any class member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement will have the opportunity to object, by filing with the Clerk of Court and serving the Parties with 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 the objector's status as a class member, and whether the objector intends to appear at the Fairness Hearing. The Parties will have 30 days following the objection period in which to submit answers to any objections that are filed.

Summary of Settlement Agreement Terms Applicable to the Class. In the Settlement Agreement, the Parties agree to terms designed to provide each Class Member notice and the opportunity to correct errors in the stoppage of Class Member's own Asylum EAD Clock. *See* Ex. 1 § III.A.

EOIR Notice to Asylum Applicants. EOIR will provide written guidance to immigration judges that they: (1) must clearly articulate the reason for the case adjournment on the record at the end of each hearing; and (2) may inform the parties of whether the Asylum EAD Clock is running or stopped. EOIR will upgrade its ECAS Case Portal to include case-specific adjournment

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Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
(202) 514-2000

code history relating to the 180-day Asylum EAD Clock as part of the information available to applicants' representatives of record. EOIR will enable immigration court personnel to provide *pro se* applicants, upon oral, in-person request, with a printout of their case-specific adjournment code history relating to their Asylum EAD Clock. For oral requests not made in person or for written requests, immigration court personnel will mail the *pro se* applicant the printout to their address of record, within 25 business days of receiving the request, absent exceptional circumstances.

Opportunity to Challenge EOIR Policy and Practice. EOIR will publish guidance on its website to clarify the requirements, expectations, and procedures for requests contesting the status of the Asylum EAD Clock ("Asylum EAD Clock correction request") from applicants in proceedings before EOIR and/or their representatives of record. EOIR will allow an applicant to raise an Asylum EAD Clock correction request in writing or orally at an immigration court proceeding and provide specified information for doing so.

USCIS Notice to Asylum Applicants. USCIS will modify the automated Case Status Online Tool ("CSOL Tool") that is currently available on USCIS's website to allow anyone who submitted an Asylum Application to determine, in addition to their current case status, whether their Affirmative Asylum EAD Clock is stopped as a result of an applicant-caused delay. USCIS will display, in addition to the case status information, Affirmative Asylum Clock information confirming that a clock stoppage exists as well as the total number of days accrued at the time of the stoppage. USCIS will revise the 180-Day Asylum EAD Clock Notice to provide an exhaustive list of clock-impacting events in the affirmative asylum process to increase applicants' notice of consequences to their Asylum EAD Clock based on actions they take or fail to take.

Opportunity to Challenge USCIS Policy and Practice. USCIS will provide two mechanisms—the eRequest Self-Service tool and the USCIS Contact Center—to correct Asylum EAD Clock information, as obtained via the CSOL Tool, that applicants believe is erroneous or inaccurate. USCIS will respond to any Asylum EAD Clock correction request, absent exceptional

United States Department of Justice
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
(202) 514-2000

circumstances, within 25 business days of receipt of a clock correction request submitted via Contact Center or eRequest. USCIS will provide the reason(s) for any denial or rejection in its written response. USCIS will update its public guidance to clarify further the requirements, expectations, and procedures for contesting Asylum EAD Clock information.

Summary of Terms Specific to Each Subclass. The Parties also agree to relief specific to the three subclasses (Remand, Unaccompanied Children, and Change of Venue), *see id*. § III.B-D. as summarized below.

Remand Policy and Practice. USCIS will maintain the language, as articulated in the settlement agreement, providing that a remand from the BIA or a federal court of appeals will restart a Class Member's Asylum EAD Clock, and that any time between the IJ decision and BIA decision or BIA decision and the court of appeals decision will be credited towards the required 180 days. USCIS will update its website and public messaging to include instructions that an applicant should submit a copy of either: (1) the BIA order remanding the case to the immigration judge; or (2) the federal court of appeals' remand order to the BIA, with the I-765 Application, to demonstrate that the applicant has accrued sufficient time on the 180-day Asylum EAD Clock.

Unaccompanied Children Policy and Practice. USCIS will issue guidance on its website and public messaging affirming that for UCs with pending Asylum Applications before USCIS, any adjournment code associated with the transfer of jurisdiction from EOIR to USCIS should not stop the Asylum EAD Clock. This guidance will clarify that in the case of UCs seeking an EAD based on pending Asylum Applications, adjudicators must not look to the EOIR Asylum EAD Clock, and that EOIR actions will not stop the clock, unless the asylum application is subsequently referred by USCIS to EOIR and actions that stop the clock occur while the case is pending before EOIR. The guidance will confirm that USCIS controls the Asylum EAD Clock in cases involving UCs with Asylum Applications pending before USCIS. USCIS will provide Class Counsel with a copy of the corresponding guidance. EOIR will include a reminder in its guidance that USCIS guidelines and policies control the Asylum EAD Clock for UCs.

United States Department of Justice
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
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Change of Venue. Defendants will change all applicable policy to reflect that a change of venue does not stop the Asylum EAD Clock in cases pending before EOIR. Defendants also will update the adjournment codes and decision code actions for EOIR and USCIS to reflect that a change of venue does not stop the Asylum EAD Clock in cases pending before EOIR. Defendants will provide Class Counsel with a copy of the updated adjournment codes.

Attorneys' Fees, Costs, and Expenses. The Parties agree to settle all claims by Plaintiffs and Class Counsel for fees, costs, and expenses, including attorneys' fees in connection with this Action in exchange for a payment of $163,508.50 by Defendants. In exchange for and effective upon receipt of Defendants' payment of the amount, Plaintiffs and Plaintiffs' Counsel will fully and forever release and discharge Defendants, the United States of America, and their present and former officials, employees, and agents, in their official and individual capacities, from liability for any and all claims for attorneys' fees for work that has been performed or payment or reimbursement of expenses or costs that have been incurred in connection with this Action.

ARGUMENT

Preliminary approval of a class action settlement is appropriate under Rule 23 of the Federal Rules of Civil Procedure where the Court finds that it "will likely be able to" approve the proposed settlement. Fed R. Civ. P. 23(e)(1)(B)(i). The Rule authorizes final approval of a settlement upon a finding that the settlement is "fair, reasonable, and adequate" after considering specified procedural and substantive factors, including whether: (A) "the class representatives and class counsel have adequately represented the class"; (B) "the proposal was negotiated at arm's length"; (C) the relief is adequate; and (D) "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(A)-(D).

I. The Court should grant preliminary approval.

This settlement meets the thresholds for final approval. First, the class is adequately represented by experienced attorneys who are affiliated with nationally recognized non-profit organizations, the Northwest Immigrant Rights Project and the National Immigration Litigation

United States Department of Justice
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
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Alliance. Fed. R. Civ. P. 23(e)(2)(A). Counsel are considered qualified when they can establish their experience in previous class actions and cases involving the same field of law. *See Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223–24 (N.D. Ill. 1985); William B. Rubenstein, 1 Newberg on Class Actions § 3:72 (5th ed. 2018) ("The fact that proposed counsel has been found adequate in other class actions is persuasive evidence that the attorney will be adequate in the present action."). Plaintiffs' counsel have a demonstrated commitment to protecting the rights of noncitizens and have considerable experience in handling complex and class action litigation in the immigration field. *See* Declarations of Matt Adams, Dkt. # 9, Mary Kenney, Dkt. # 10, and Trina Realmuto, Dkt. # 11. Two of the attorneys, Adams and Kenney, represented the class in *ABT*, No. C11-2108 RAJ. Dkt. # 9 ¶ 4; Dkt. # 10 ¶ 6. Class counsel zealously represented the interests of the class throughout the negotiations. As a result, counsel had an "adequate information base" in negotiating the Settlement Agreement. Fed. R. Civ. P. 23(e)(2) advisory committee note.

Second, the Settlement Agreement is the product of serious, informed, arm's length negotiations between attorneys versed in the legal and factual issues of the case. *See* Fed. R. Civ. P. 23(e)(2)(B). The Parties began negotiations approximately two weeks after Plaintiffs filed their Complaint and, for the next 20 months, engaged in extensive back-and-forth negotiations about specific Settlement Agreement terms. The Settlement Agreement includes terms similar to those Defendants had implemented pursuant to the *ABT* Settlement before it expired. The Parties are represented by experienced counsel and have been adequately represented throughout the litigation and the settlement negotiations.

Third, the relief is adequate. *See* Fed. R. Civ. P. 23(e)(2)(C). Each class member will be afforded relief through the Settlement Agreement that addresses the claims in the Complaint, whether through notice, opportunities to contest Asylum EAD Clock determinations, or Defendants' publication of information clarifying that specific events, including remand from the BIA or a federal court of appeals, the transfer of a UC's Asylum Application from USCIS to EOIR,

United States Department of Justice
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station, Washington, D.C. 20044
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or a change of venue to another immigration court, do not stop the Asylum EAD Clock. The Settlement Agreement guarantees this relief to Plaintiffs while removing the risk inherent in a trial. It also promotes judicial efficiency by providing nationwide programmatic relief.

Fourth, the Settlement Agreement does not have any obvious deficiencies and does not improperly grant preferential treatment to segments of the class. *See* Fed. R. Civ. P. 23(e)(2)(D). While the Settlement Agreement includes subclasses and relief specific those subclasses, the purpose is to tailor relief to the claims that arise in situations specific to those subclasses, such as when an asylum applicant is a UC or seeks a change of venue in immigration court. Any difference afforded a subclass is based on the circumstances of that subclass and not because the process was applied more favorably to some class members as opposed to others. Each class member is being provided meaningful relief that addresses the claims in the Complaint.

Further the amount of the agreed-upon consideration, $163,508,50, in exchange for a release from claims for attorney fees, costs, and expenses is reasonable. "In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ P. 23(h). Courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if parties have already agreed to an amount. *Briseño v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021) (citations omitted).

Plaintiffs could be entitled to attorneys' fees and costs under EAJA, 28 U.S.C. § 2412. The EAJA fee provision was designed to ensure that individuals and groups with far fewer resources than the federal government could obtain counsel willing to invest the time and effort to litigate lawsuits against the government. *Meinhold v. U.S. Dep't of Def.*, 123 F.3d 1275, 1280 n.3 (9th Cir. 1997), *amended on other grounds*, 131 F.3d 842 (9th Cir. 1997). Settlement here effectuates the reasoned judgment and interests of the Parties. Allowing counsel to seek fees and costs on their behalf and negotiate with the Defendants to do so allowed the class to be represented by counsel with the expertise, capacity, and willingness to take on this case.

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The Parties' method of determining the fee award is reasonable and appropriate. Fees can be calculated by either the lodestar or percentage-of-recovery method in class actions that result in benefits to the entire class. *In re Bluetooth Headset Prods. Liabl. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("*Bluetooth*"). "The 'lodestar method' is appropriate in class actions brought under fee-shifting statutes . . . where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized." *K.H. v. Sec'y of Dep't of Homeland Sec.*, No. 15-cv-02740, 2018 WL 6606248, at *5 (N.D. Cal. Dec. 17, 2018) (quoting *Bluetooth*). That is the situation here, and the Parties agree to settle on attorneys' fees under EAJA, a fee-shifting statute. The lodestar figure is calculated by "multiplying the number of hours the prevailing party reasonably expended on litigation" (as supported by adequate documentation) "by a reasonable hourly rate" for the region and for the experience of the lawyer. *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003) (citation omitted). If approved, the settlement would provide Plaintiffs' counsel compensation in connection with this litigation. By committing to the terms in the Settlement Agreement submitted herewith, Plaintiffs' counsel eliminate litigation risk and gain certainty over whether and how they will be compensated. Defendants eliminate their litigation risk and gain certainty over whether and how much they must pay. In sum, approval of this settlement would serve justice and preserve the Court's and Parties' resources by avoiding the time and expense of litigation over fees and costs.

II. The Court should approve the Class Notice and set a final hearing.

The Settlement Agreement also provides for a notice plan that is reasonably calculated to advise class members of the terms of the proposed settlement and provides the opportunity to present any objections. Fed. R. Civ. P. 23(e)(1)(B). Individual notice of a proposed class settlement is not required for classes certified under Rule 23(b)(2). The Parties agree that the language in the Notice, *see* Ex. 1, Ex. B, accurately portrays the Settlement Agreement and that they will be able to effectuate Notice within the timeline agreed to and articulated in the Settlement Agreement and Proposed Order, *see* Ex. 1, Ex. A. The Notice sets forth the main terms of the Settlement Agreement, explains to class members how to object and the deadline for doing so. Ex. 1, Ex. B.

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The proposed notice plan will ensure that all class members receive reasonable notice of the Settlement Agreement.

To expedite the resolution of this matter while still allowing adequate time for any class member to file an objection, the parties further request that if the Court approves the form and manner of the Class Notice that the Court schedule a Fairness Hearing no later than 60 days from the date on which the Court approves the Class Notice.

CONCLUSION

For the foregoing reasons, the Parties jointly request this Court to preliminarily approve the Settlement Agreement and Class Notice, and set a Fairness Hearing on the Settlement Agreement no later than 60 days from the date on which it approves the form and manner of the Class Notice.

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Respectfully submitted,

For the Plaintiffs:

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Dated this 29th day of July, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2024, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Aneesa Ahmed

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