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15 UNITED STATES DISTRICT COURT
 16
 17 CENTRAL DISTRICT OF CALIFORNIA
 18
 19 WESTERN DIVISION

| | | |
|----|--|---------------------------------|
| 14 | CAROLYN ROBB HOOTKINS, |) Case No. CV07-05696 (CAS) |
| 15 | <i>et al.</i> , |) |
| 16 | Plaintiffs, |) Date: March 1, 2010 |
| 17 | v. |) Time: 10:00 a.m. |
| 18 | JANET NAPOLITANO, Secretary, |) Courtroom: 5 |
| 19 | U.S. Department of Homeland |) Honorable Christina A. Snyder |
| 20 | Security; Alejandro Mayorkas, ¹ |) |
| 21 | Director, U.S. Citizenship and |) NOTICE OF MOTION AND |
| 22 | Immigration Services, |) JOINT MOTION FOR |
| 23 | Defendants. |) PRELIMINARY APPROVAL OF |
| 24 | |) CLASS ACTION SETTLEMENT |
| 25 | |) AND APPROVAL OF NOTICE |
| 26 | |) TO CLASS, AND MEMORANDUM |
| 27 | |) OF POINTS AND AUTHORITIES |
| 28 | |) IN SUPPORT OF MOTION |
| | |) |

25
 26 ¹ Pursuant to Fed. R. Civ. P. 25(d), Alejandro Mayorkas, as the confirmed
 27 successor to Michael Aytes, is automatically substituted as the proper party
 28 Defendant.

1 **PLEASE TAKE NOTICE** that on March 1, 2010, at 10:00 a.m., or as soon
2 thereafter as the parties may be heard, Plaintiffs Carolyn Robb Hootkins, Ana
3 Maria Moncayo-Gigax, Suzanne Henriette De Mailly, Sara Cruz Vargas de Fisher,
4 Raymond Lockett, Elsa Cecilia Brenteson, Pauline Marie Gobeil, Rose Freeda
5 Fishman-Corman, Khin Thidar Win, Li Ju Lu, Purita Manuel Poindexter, Tracy
6 Lee Rudl, and Dieu Ngoc Nguyen, on behalf of themselves, the Class and all Class
7 Members and Defendants (collectively, the “Settling Parties” or “Plaintiffs”); and
8 Defendants Janet Napolitano, Secretary of Homeland Security; and Alejandro
9 Mayorkas, Director, U.S. Citizenship and Immigration Services (“USCIS”)
10 (collectively, the "Defendants") will bring for hearing a Joint Motion for
11 Preliminary Approval of Class Action Settlement and Approval of Notice to Class.
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14 The parties respectfully request that the Court:

- 15 (a) Grant preliminary approval of the Stipulation and Agreement of Settlement and
16 Release (the “Settlement Agreement”) (attached hereto as Exhibit 1);
17
18 (b) Approve the form and method of notifying the class of the settlement;
19
20 (c) Set a schedule for the Fairness Hearing and other appropriate dates;
21
22 (d) After the Fairness Hearing, grant final approval to the settlement; and
23
24 (e) After granting final approval to the settlement, vacate the injunction entered by
25 the Court on April 28, 2009 (dkt 151).

26 The hearing will take place before the Honorable Christina A. Snyder,
27 Courtroom 5, 312 North Spring Street, Los Angeles, California 90012.

28 This motion is based on the Memorandum of Points and Authorities

1 attached hereto; all pleadings, papers and files in this action; the proposed
2 settlement agreement; and such oral argument as may be presented at the hearing
3 on this motion.
4

5 This motion is made following the conference of counsel pursuant to L.R.
6 7-3 which took place on January 4, 2010.
7

8 Dated: January 25, 2010
9

10 Respectfully submitted,

11 Attorneys for Defendants:

12 TONY WEST
13 United States Department of Justice
14 Assistant Attorney General

15 /s/ Elizabeth J. Stevens
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and Defendants jointly submit this Memorandum in Support of the
4 Joint Motion for Preliminary Approval of Class Action Settlement and Approval
5 of Notice to Class. For the reasons articulated in the motion and this supporting
6 memorandum, the parties respectfully request that the Court preliminarily approve
7 the Settlement Agreement and approve the class notice and procedures, and
8 schedule a date for the Fairness Hearing. The parties further request final
9 approval of the settlement after the hearing, followed by *vacatur* of the injunction
10 entered by the Court on April 28, 2009 (dkt 151).
11

12 **II. STATEMENT OF FACTS**

13 **A. Procedural History of the Case**

14 Plaintiffs, on behalf of themselves and those who are similarly situated, are
15 widows or widowers of now deceased citizens who are intended beneficiaries of
16 Form I-130 alien relative petitions filed by the citizens, with the exception of one
17 Plaintiff who entered the United States on a K-1 fiancé visa. Plaintiffs reside in
18 the Ninth Circuit and either filed Form I-485 applications for adjustment of status
19 or Form DS-230 immigrant visa applications. Along with additional plaintiffs
20 who are not members of the Settling Parties, Plaintiffs filed a putative class action
21 challenging Defendants' determinations that Plaintiffs are not entitled to
22 "immediate relative" classifications under 8 U.S.C. § 1151(b)(2)(A)(i) due to the
23 deaths of their citizen spouses before the aliens received lawful permanent resident
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1 status. Defendants maintained that, in order to be considered an "immediate
2 relative" spouse for purposes of section 1151 *et seq.*, the widow(er) must have
3 been married to the citizen for at least two years prior to the citizen spouse's death.
4

5 The complaint, initially filed in August 2007 and amended in March of
6 2008, sought mandamus and Administrative Procedure Act review of the
7 adjustment-of-status denials, including requests for declaratory and injunctive
8 relief, alleging that USCIS improperly denied the visa petitions despite contrary
9 Ninth Circuit precedent in *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006),
10 improperly revoked previously approved petitions, improperly issued guidance to
11 USCIS adjudicators regarding how to handle such cases in the Ninth Circuit, and
12 improperly denied the adjustment application of the fiancé visa entrant.
13

14 Defendants filed a motion to dismiss in December 2007, and the parties
15 filed opposing motions for summary judgment in March 2009. In January 2009,
16 the Court had certified a Ninth Circuit-wide class and a fiancé sub-class but denied
17 the nationwide class sought by the original plaintiffs (dkt 108). The class and
18 sub-class certified by the Court include future class members whose citizen
19 spouses die prior to their second wedding anniversary, as long as the citizen
20 spouse filed the Form I-130 alien relative petition or Form I-129F petition for
21 alien fiance(e) and Form I-864 or I-864EZ affidavit of support on behalf of the
22 alien spouses and the other class requirements are met.
23
24

25 Following briefing on cross-motions for summary judgment, on April 28,
26 2009, the district court issued an order finding, *inter alia*, that plaintiffs who
27 reside in the Ninth Circuit and the Sixth Circuit, of which there were no named

28 Notice of Motion and Joint Motion For Preliminary Approval of Class Action Settlement and Approval of Notice to
Class, and Memorandum of Points and Authorities in Support of Motion CV07-05696 (CAS)

1 plaintiffs, are entitled to immediate relative classification as surviving spouses of
2 deceased U.S. citizens (dkt 151). The Court further found USCIS's former policy
3 guidance concerning the application of the decision in *Freeman v. Gonzales*, 444
4 F.3d 1031, to Ninth Circuit plaintiffs to be invalid. The policy guidance said that
5 USCIS will follow *Freeman* in the Ninth Circuit only if, prior to the death of the
6 citizen spouse, the alien filed an adjustment application. Additionally, the
7 guidance said that USCIS will automatically revoke the approval of a Form I-130
8 petition for an alien whose spouse has died, unless the alien widow or widower
9 presents a request for humanitarian reinstatement under 8 C.F.R.
10 § 205.1(a)(3)(i)(C)(2) and submits a substitute affidavit of support from a
11 qualified substitute sponsor. The Court held that *Freeman* applies equally to those
12 cases in which the Form I-485 application was not filed prior to the citizen
13 spouse's death, and that the automatic revocation regulation, 8 C.F.R. § 205.1, is
14 invalid as a matter of law as applied to Ninth and Sixth Circuit plaintiffs. The
15 Court ordered Defendants to reopen the alien relative petitions, adjustment
16 applications, and immigrant visa applications for Plaintiffs in the Ninth and Sixth
17 Circuits, and to adjudicate them in a manner consistent with the order.² That
18 injunction, not the entirety of the order issued on April 28, 2009, is the subject of
19 this motion. Pursuant to the terms of the Settlement Agreement, the parties jointly
20 apply for *vacatur* of the injunction.
21
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24

25
26 ² The Court also found that Plaintiffs in the Ninth Circuit subclass who
27 entered on K-1 fiancé visas are entitled to summary judgment based upon *Choin v.*
28 *Mukasey*, 537 F.3d 1116 (9th Cir. 2008).

1 Defendants filed a notice of appeal on June 29, 2009. The Ninth Circuit has
2 dismissed that appeal without prejudice to reinstatement pending this Court's
3 determination on the Settlement Agreement.

4 **B. Subsequent Legislation**

5 On October 28, 2009, President Barack Obama signed into law the
6 Department of Homeland Security Appropriations Act of 2010 ("DHSAA"), which
7 included an amendment to 8 U.S.C. § 1151(b)(2)(A)(i) striking the phrase
8 requiring that an alien who applies to adjust status as an immediate relative spouse
9 of a U.S. citizen must be married to the U.S. citizen spouse-petitioner for at least
10 two years, and providing other assorted relief. Pub. L. 111-83, § 568(c)-(e), 123
11 Stat. 2142, 2186-88 (2009). The amendment became effective immediately upon
12 enactment, and applies to any visa petition or adjustment application pending on
13 or after the date of enactment. On December 14, 2009, USCIS published a new
14 guidance memorandum on the processing of applications filed by surviving
15 spouses of deceased U.S. citizens ("Guidance") (attached hereto as Exhibit 2).

18 **C. Proposed Settlement Agreement**

19 The parties reached a settlement that will dispose of this action. The terms
20 of the parties' settlement are embodied in the Settlement Agreement. *See* Exhibit
21 1. The settlement confers significant benefits on Plaintiffs and all Class Members.
22 The key terms of the Settlement Agreement provide for both parties to file a joint
23 motion in the Court of Appeals for a remand to the district court for approval of
24 the settlement. In addition, the Settlement Agreement requires the parties to jointly
25 move the district court for *vacatur* of the injunction. The agreement also requires
26 adjudication of all cases of class members in accordance with the Guidance.
27

1 In summary, USCIS will re-open any Class Member's Form I-130 petition
2 that is still pending or was denied and convert it to a widow(er)'s Form I-360
3 self-petition, to be adjudicated under 8 U.S.C. § 1151(b)(2)(A)(i), as amended by
4 § 568(c) of Public Law 111-83. Form I-130 petitions that were approved but later
5 revoked under 8 C.F.R. § 205.1(a)(3)(i)(C) will be deemed reinstated. USCIS will
6 also adjudicate any Class Member's Form I-485 application under the new law if
7 the Class Member is still in the United States and if USCIS still has jurisdiction
8 over the Form I-485, *i.e.*, removal proceedings have not been commenced. USCIS
9 will re-open Forms I-485 that were denied.
10

11 The settlement's terms also cover surviving spouses admitted to the United
12 States as K non-immigrant fiancés. Class Members who abandoned his or her
13 adjustment applications by departing the United States will be able to apply for an
14 immigrant visa following approval of the Class Member's Form I-360 self-
15 petition. For purposes of 8 U.S.C. § 1182(a)(9)(B), a Class Member shall be
16 deemed not to have accrued any unlawful presence within the United States on or
17 before October 28, 2009. All converted Form I-360 self-petitions will carry the
18 filing date of the Form I-130 petition originally filed. As a result, under 8 U.S.C.
19 § 1151(f)(1), any unmarried sons or daughters of Class Members who were under
20 21 years of age at the time the Form I-130 petition was filed will still be
21 considered to be under 21 years of age, for purposes of determining whether they
22 qualify as derivative beneficiaries of the Form I-360 self-petition.
23

24 The Settlement Agreement sets up a dispute resolution structure, and will
25 remain in effect for two years after district court approval. Pursuant to Fed. R.
26 Civ. P. 23(h), the parties agreed in the Settlement Agreement to the payment by
27

1 Defendants of the sum of \$125,000.00 in settlement of all claims for attorneys'
2 fees and costs that could have been or will be claimed in this litigation. This total
3 includes \$4,787.80 in costs taxable under 28 U.S.C. § 1920. This issue was
4 negotiated separately from the other terms included in the Settlement Agreement.

5 Pursuant to Rule 23(e)(3), the parties hereby notify the Court that, other
6 than as stated in the Settlement Agreement, there are no agreements requiring
7 disclosure that were “made in connection with the propos[ed settlement].” *See*
8 Fed. R. Civ. P. 23(e)(3).

10 **D. Proposed Notice to the Class**

11 Notice of the proposed settlement is to be provided to Class Members by
12 publication. *See* Exhibit 1 ¶ 25. The Notice contains a summary of the terms of
13 the settlement, a description of who qualifies as a Class Member, instructions on
14 how to obtain further information about the settlement, and procedures for
15 objecting and appearing at the Fairness Hearing. *See* Proposed Notice, Exhibit 3.
16 The Notice and the Settlement Agreement will be prominently displayed by the
17 parties in appropriate places on the USCIS and Parrilli Renison public websites;
18 Class Counsel will provide the Notice to the Class and the Settlement Agreement
19 for posting on the American Immigration Lawyers Association website, in
20 addition to a number of popular websites utilized by immigrants and immigration
21 lawyers, and including the website for the non-profit group Surviving Spouses
22 Against Deportation; and Defendants will distribute the Notice and the Settlement
23 Agreement through the USCIS Community Relations Program to the existing
24 network of community-based and non-profit organizations which provide advice
25 and assistance to immigrants.

1 Class Members will be notified of the Settlement Agreement both before
2 and after the settlement is given final approval. These notices are appropriate
3 under Rule 23(e)(1) and will enable Class Members to obtain the relief they are
4 entitled to under the Settlement Agreement.

5 III. ARGUMENT

6 A. Standard of Review

7
8 Settlements and voluntary conciliation are “the preferred means of dispute
9 resolution.” *In re Syncor Erisa Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008)
10 (additional citation omitted). The public policy favoring settlement agreements is
11 particularly strong in complex class action litigation. *Id.* The Federal Rules of
12 Civil Procedure and the Local Rules of the United States District Court, Central
13 District of California, also encourage settlement of cases. *Id.*, citing Fed. R. Civ.
14 P. 16(a)(5) (one of the five purposes of a pretrial conference is to facilitate
15 settlement); L.R. 16-2.9 (requiring parties to exhaust all possibilities of
16 settlement); L.R. 16-15 to 15.9 (setting forth policies and procedures for
17 settlement including encouraging disposition of civil litigation by settlement by
18 any reasonable means).

19
20 The court's role in the settlement of a class action is to protect unnamed
21 class members from unfair settlements affecting their rights. *Id.* at 1100-02
22 (additional citations omitted). Under Fed. R. Civ. P. 23, the court evaluates
23 whether the proposed settlement is fundamentally fair, reasonable and adequate.
24 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (additional citation
25 omitted). One requirement is that adequate notice of the settlement be provided to
26 the class members. *Id.* at 1025; Fed. R. Civ. P. 23(e)(1).

1 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate**

2 The Court should promptly grant preliminary approval of the Settlement
3 Agreement and approval of the form and method of notifying the class of the
4 settlement because the terms of the settlement are fair, reasonable, and beyond
5 adequate. While the Court has discretion in evaluating preliminarily the
6 settlement’s fairness and reasonableness, courts in this Circuit are generally
7 guided at this stage by the same factors that govern final approval of class action
8 settlements:
9

10 the strength of the plaintiffs' case; the risk, expense, complexity, and
11 likely duration of further litigation; the risk of maintaining class
12 action status throughout the trial; the amount offered in settlement;
13 the extent of discovery completed and the stage of the proceedings;
14 the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed
settlement.

15 *Hanlon*, 150 F.3d at 1026 (additional citations omitted). Additionally, the
16 settlement must not be the result of collusion. *Id.*

17 The Settlement Agreement was negotiated between the parties at arm’s
18 length, and there is no suggestion of fraud or collusion. “As a general principle,
19 ‘the courts respect the integrity of counsel and presume the absence of fraud or
20 collusion in negotiating the settlement, unless evidence to the contrary is
21 offered.’” *Hemphill v. San Diego Ass’n of Realtors, Inc.*, 225 F.R.D.
22 616, 621 (S.D. Cal. 2005) (citing A. Conte and H. Newberg, *Newberg on Class*
23 *Actions* § 11.51(4th ed. 2002) at 158-59). This case has been vigorously contested
24 by both sides. The parties engaged in extensive briefing and have negotiated – at
25 arm’s length – a resolution of the action, resulting in the Settlement Agreement.
26

27 Furthermore, because Plaintiffs sued for declaratory and injunctive relief and do
28 Notice of Motion and Joint Motion For Preliminary Approval of Class Action Settlement and Approval of Notice to
Class, and Memorandum of Points and Authorities in Support of Motion CV07-05696 (CAS)

1 not seek monetary damages, and any attorneys' fees awarded must be separately
2 approved by the court, there is no danger that Plaintiffs colluded with the
3 government Defendants to sacrifice the interests of Class Members for their own
4 monetary gain. As this Settlement Agreement was the result of the fair
5 functioning of the adversarial process, the parties did not collude to reach the
6 settlement.
7

8 The parties note that the factors set forth in *Hanlon* are not particularly
9 useful to determining whether the terms of the settlement reached in this case are
10 fair, reasonable, and adequate because of the unusual procedural posture of the
11 case. The litigation has been terminated following the issuance of a permanent
12 injunction by the Court. Therefore, factors such as the strength of Plaintiffs' case,
13 and the complexity and likely duration of further litigation are no longer relevant.
14 Class counsel is of the opinion that this settlement is a favorable outcome for the
15 class. Class counsel arrived at this conclusion after extensive investigation and
16 negotiations with Defendants' counsel. Further, there has been no indication that
17 individual Class Members will oppose the settlement.
18

19 The Court should preliminarily approve the Settlement Agreement because
20 the terms of the settlement are fair, reasonable, and beyond adequate. The
21 Settlement Agreement provides the settlement class with the most important relief
22 sought by the Second Amended Complaint. Specifically, in the Settlement
23 Agreement, Defendants agree to adjudicate Class Members' applications in
24 accordance with the Guidance. Therefore, the death of the citizen petitioner will
25 no longer disqualify an immediate relative from lawful permanent resident status.
26 Accordingly, the Settlement Agreement falls within the reasonable range of
27

1 possible recovery for Plaintiffs, and its fairness counsels for preliminary approval
2 of the agreement.

3 **C. The Court Should Approve Parties' Proposed Form and Method of Class**
4 **Notice**

5 Rule 23(e)(1) requires that the court "direct notice in a reasonable manner to
6 all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1).
7 Notice is satisfactory if it "generally describes the terms of the settlement in
8 sufficient detail to alert those with adverse viewpoints to investigate and to come
9 forward and be heard.'" *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th
10 Cir.2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th
11 Cir.1980)). Here, the proposed notice procedures involve the posting of the
12 Notice and the Settlement Agreement on the USCIS and Parrilli Renison public
13 websites, and the American Immigration Lawyers Association website, in addition
14 to a number of popular websites utilized by immigrants and immigration lawyers,
15 and including the website for the non-profit group Surviving Spouses Against
16 Deportation. Defendants will also distribute the Notice and the Settlement
17 Agreement through the USCIS Community Relations Program to the existing
18 network of community-based and non-profit organizations which provide advice
19 and assistance to immigrants.
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21

22 These notification procedures are specifically tailored to ensure that Class
23 Members will be informed of the settlement and their rights to object. In
24 particular, the parties believe that notice by means of the various websites and
25 distribution through the USCIS Community Relations Program is reasonably
26 calculated to inform Class Members of the settlement, as these are the most likely
27

1 locations potential applicants will search for adjudication and/or class-related
2 information pertinent to surviving spouses of U.S. citizens.³

3 The contents of the Notice are adequate to inform Class Members of their
4 rights. The Notice contains a description of the certified class and sub-class; a
5 summary of the litigation, subsequent legislation, and the proposed settlement; and
6 instructions about how to file an objection. The proposed Notice here provides
7 ample information to enable potential Class Members to determine whether they
8 qualify for relief, what relief the settlement will provide, and how to file an
9 objection. The Notice is therefore reasonable and satisfies Rule 23(e)'s
10 requirements.
11

12 **D. The Attorneys' Fees and Expenses Provided for by the Settlement**
13 **Agreement Are Reasonable**

14 As part of the Settlement Agreement, Defendants have agreed to pay
15 attorneys' fees and costs to Class Counsel. The Court may award reasonable
16 attorneys' fees and nontaxable costs that are authorized by the parties' agreement
17 in a class action settlement. *See* Fed. R. Civ. P. 23(h). The negotiated fee award
18 of \$125,000.00 is entirely reasonable, and fully consistent with the law of this
19 District, given the complexity of this case, the substantial work and time invested
20 to litigate and ultimately negotiate a settlement, and the significant benefits and
21 relief provided to the putative class as a result. The parties thus submit that the
22
23

24
25 ³ Individual Class Members cannot be readily identified to warrant
26 individual notice by mail, as USCIS does not maintain records in a manner that
27 would enable the affirmative identification of applicants who would qualify as
28 Class Members. Such notice also is not required by Rule 23(e) or the U.S.
Constitution.

1 award of fees and costs provided by the Settlement Agreement should be
2 preliminarily approved by the Court.

3 **E. The Court Should Vacate the Injunction Contained Within The Order**
4 **of April 28, 2009.**

5 As part of the settlement agreement, the parties agrees to seek *vacatur* of the
6 portion of the Court's Order of April 28, 2009, enjoining USCIS to adjudicate all
7 alien relative petitions and adjustment applications of class members in a manner
8 consistent with the order. The parties do not seek vacatur of the entire decision.

9 Under Fed. R. Civ. P. 60(b), a court may relieve a party or its legal
10 representative from an order where applying the order prospectively is no longer
11 equitable, or any other reason that justifies relief. Both parties agree that DHSAA
12 § 568 and USCIS's Guidance regarding the processing of applications under that
13 section provide potential benefits to Class Members not contained within the four
14 corners of this Court's April 28, 2009 Order. Moreover, as the Order interprets a
15 section of the Immigration and Nationality Act not specifically amended by
16 DHSAA § 568, Defendants arguably are bound by the injunction and would be
17 unable to adjudicate Class Member's petitions and application under the new
18 provisions.
19
20

21 Accordingly, as part of the final Order approving the settlement agreement,
22 both parties request that this Court vacate the injunction contained within the
23 Order of April 28, 2009, as it prospectively is no longer equitable.

24 //

25 //

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should preliminarily approve the
3 Settlement Agreement, approve the form and method of the notice to the class,
4 schedule appropriate dates for the Fairness Hearing and other proceedings
5 necessary to give final approval to the settlement. Following the Fairness Hearing,
6 the Court should enter final judgment and vacate the injunction.
7

8 Dated: January 25, 2010
9

10
11 Attorneys for Defendants:

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case No. CV07-05696 (CAS)

I hereby certify that on this 25th day of January 2010, true and correct copies of the foregoing **NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF NOTICE TO CLASS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION** was served pursuant to the district court's ECF system as to the following ECF filers:

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/s/ Elizabeth J. Stevens
Elizabeth J. Stevens
Assistant Director, District Court Section
Office of Immigration Litigation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

----- -X
CAROLYN ROBB HOOTKINS, et al.,

Plaintiffs,

Case No. CV07-5696 (CAS)

- against -

Protected under F.R.E. 408

JANET NAPOLITANO, et al.,

Defendants.

----- -X

STIPULATION AND AGREEMENT OF SETTLEMENT AND RELEASE

Plaintiffs in the above-captioned matter, on behalf of themselves, the Class and all Class Members (as defined below), and Defendants Janet Napolitano, Secretary of Homeland Security and Alejandro Mayorkas, Director of the United States Citizenship and Immigration Services ("USCIS") (together, "Defendants"), by and through their attorneys, hereby enter into this Stipulation and Agreement of Settlement, and Release (the "Stipulation"), as of the Approval date as defined in paragraph 4.

WHEREAS:

A. Plaintiffs filed suit on behalf of themselves and all others similarly situated against Defendants in the United States District Court for the Central District of California on August 30, 2007, seeking class certification and declaratory and injunctive relief, and filed an Amended Complaint on March 20, 2008;

B. By Order of January 6, 2009, the Court granted Plaintiffs' Motion for Class Certification in part and denied it in part;

C. By Order of April 28, 2009, the Court granted Plaintiffs' Motion for Summary Judgment in part and denied it in part, granting injunctive relief;

D. On October 28, 2009, President Barack Obama signed into law the Department of Homeland Security Appropriations Act of 2010, which included an amendment to 8 U.S.C. § 1151(b)(2)(A)(i) striking the words "for at least two years at the time of the citizen's death" from the second sentence, and providing other assorted relief. Pub. L. 111-83, § 568(c)-(e), 123 Stat. 2142, 2186-88 (2009). The amendments became effective immediately upon enactment, and apply to any visa petition or adjustment application pending on or after the date of enactment.

E. Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the Amended Complaint filed in the Action, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to Plaintiffs, the Class, or the Class Members, but have agreed to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and terminate the Action and any and all Settled Claims.

F. Class Counsel have conducted discussions and arm's length negotiations with Defendants' Counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and negotiating a settlement which is consistent with the interests of Plaintiffs, the Class, and all Class Members.

G. Class Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and in the interests of Plaintiffs, the Class, and all Class Members; have agreed that Defendants should be released from the Settled Claims pursuant to the terms and provisions of this Stipulation; and have agreed to the dismissal of the Action with prejudice, after considering the substantial benefits that Plaintiffs, the Class, and all Class Members will

receive from settlement of the Action, the risks of litigation, and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the parties to this Stipulation, through their respective attorneys, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that the Settled Claims as against Defendants shall be compromised, settled, forever released, barred, and dismissed with prejudice, upon and subject to the following terms and conditions:

I. DEFINITIONS

Wherever used in this Stipulation, the following terms have the meanings set forth below:

1. "Action" means the above-captioned action pending in the United States District Court for the Central District of California (docket no. CV07-5696).

2. "Class" means, for purposes of this settlement only, a Plaintiff class and subclass pursuant to Rule 23 of the Federal Rules of Civil Procedure as certified by the Court on January 6, 2009, comprising:

A. All aliens whose United States citizen spouse died before the couple's two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit; AND

B. All aliens who, within ninety days of admission to the United States as a nonimmigrant fiancé, married the petitioning United States citizen, and whose citizen spouse died before the couple's two-year wedding anniversary, so long as he or she can also demonstrate that the citizen

spouse filed an I-129F petition and a form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form I-129F petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

The class ceases to exist, and all membership in the Class ends, upon the termination of this Stipulation pursuant to paragraph 35.

3. "Class Member" means any Person included in the Class.

4. "Approval Date" means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 28 below.

5. "Plaintiff(s)" means Carolyn Robb Hootkins, Ana Maria Moncayo-Gigax, Suzanne Henriette De Mailly, Sara Cruz Vargas de Fisher, Raymond Lockett, Elsa Cecilia Brenteson, Pauline Marie Gobeil, Rose Freeda Fishman-Corman, Khin Thidar Win, Li Ju Lu, Purita Manuel Poindexter, Tracy Lee Rudl, and Dieu Ngoc Nguyen.

6. "Class Counsel" means Parrilli Renison LLC, 5285 S W Meadows Road, Suite 175, Lake Oswego, Oregon 97035; and Alan R. Diamante Law Offices, 523 W. Sixth Street, Suite 210, Los Angeles, California, 90014. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

7. "Defendants" means any and all Defendants, their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

8. "Settled Claims" means any and all actions, suits, claims, demands, rights, liabilities, and causes of action, of every nature and description, whether known or unknown, accrued or unaccrued, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, that were asserted or that could have been asserted or could be asserted in this Action in any forum, that Plaintiffs, the Class, the Class Members or any of them, or any of their heirs, representatives, attorneys, successors, assigns, and any person

they represent, in the past had, now have, or during the pendency of the Stipulation might have against Defendants or any claims, which regard, concern, relate to, refer to, arise out of, or are based upon, in any way: (a) the allegations, transactions, facts, matters, occurrences, representations, omissions, disclosures, statements, failure to disclose, or failure to act involved, set forth, referred to or that were, could be, or could have been asserted in the Action, including known and Unknown Claims as herein defined, and whether or not concealed or hidden; and (b) Defendants' defense of or settlement of the Action except that Plaintiffs and Class members may raise Settled Claims, where applicable, in removal proceedings following a denial of their applications for adjustment of status or in a petition for review arising from such removal proceedings.

9. "Settlement" means the settlement contemplated by this Stipulation.

10. As used herein, "Unknown Claims" shall mean any and all actions, suits, claims, demands, rights, liabilities, and causes of action relating to or arising from the allegations in the Action that Plaintiffs, the Class, or any of the Class Members do not know of or suspect to exist in their favor at the time of the release of Defendants, including but not limited to those that, if known by them, might have affected their agreement to the Settlement.

11. "Widows Guidance" means the December 2, 2009, USCIS Memorandum, entitled "Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children (REVISED)," which has been posted on the USCIS website.

II. RELEASE; SCOPE AND EFFECT OF RELEASE

12. This Stipulation shall be a full and final disposition of the Action with prejudice and of any and all Settled Claims as against all Defendants.

13. On the Approval Date, Plaintiffs, the Class, and the Class Members, on behalf of themselves, their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners, and any Persons they represent, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Defendants of and from any and all of the Settled Claims, and

Plaintiffs, the Class, and the Class Members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any Defendants.

III. PROCESSING OF CLASS MEMBERS' PETITIONS AND APPLICATIONS

14. USCIS will adjudicate Class Members' claims according to the Widow's Guidance. In particular:

A. Any Class Member's Form I-130 that is still pending with USCIS is converted to, and will be adjudicated as, a widow(er)'s Form I-360.

B. If USCIS denied the Form I-130, the Form I-130 is reopened, as of December 2, 2009, and converted to a Form I-360.

C. Any pending or reopened Form I-130 that is converted to a Form I-360 will be adjudicated under 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83. The Class Member must establish that he or she was married to the deceased citizen when the deceased citizen died, that their marriage was bona fide, that they were not divorced or legally separated when the deceased citizen died, and that the Class Member has not remarried. All other requirements for approval of a visa petition apply to the adjudication of the case, including 8 U.S.C. §§ 1154(c), 1154(g) and 1255(e)(3), if applicable.

D. If, as in the case of Liju LU and Class Members represented by her, a Form I-130 was approved, but the approval was revoked under 8 C.F.R. § 205.1(a)(3)(i)(C), the approval is deemed reinstated as of October 28, 2009.

E. USCIS will also adjudicate any Class Member's Form I-485 in light of 8 U.S.C. § 1151(b)(2)(A)(i) as amended by § 568(c) of Public Law 111-83, if the Class Member is still in the United States and USCIS still has jurisdiction of the Form I-485.

If USCIS had denied the Form I-485, the Form I-485 is reopened, as of December 2, 2009.

F. For a Class Member in the subclass as defined in paragraph 2(B) (relating to aliens admitted as K nonimmigrants) there will be no Form I-130 if the couple married within 90 days of the K-1's admission. In this situation, for purposes of adjudicating of a Form I-485 that was pending on October 28, 2009, the K-1 nonimmigrant, and any K-2 children, will be deemed to be the beneficiaries of an approved Form I-360.

G. If a Class Member had abandoned his or her adjustment application by departing the United States without a grant of advance parole, or by leaving with a grant of advance parole but not returning before the expiration of the advance parole period, the approval of the Class Member's Form I-360 will permit the Class Member to apply for an immigrant visa.

H. For purposes of 8 U.S.C. § 1182(a)(9)(B), a Class Member shall be deemed not to have accrued any unlawful presence within the United States on or before October 28, 2009.

I. Any Class Member who was removed from the United States will be required to file an individual Form I-212, Application for Permission to Reapply for Admission, to waive inadmissibility under 8 U.S.C. § 1182(a)(9)(A). The Form I-212 will be accepted without regard to the length of time the Class Member has remained outside of the United States.

J. All converted Form I-360 Self-Petitions will carry the filing date of the Form I-130 Petition originally filed. As a result, under 8 U.S.C. § 1151(f)(1), any unmarried sons or daughters of Class Members who were under 21 years of age at the time the Form I-130 Petition was filed will still be considered to be under 21 years of age, for purposes of determining whether they qualify as derivative beneficiaries of the Form I-360 Self-Petition.

15. If USCIS denies a Class Member's converted Form I-360, the Class Member may seek administrative appeal or judicial review to the extent permitted by law.

16. If USCIS denies a Class Member's Form I-485, then, unless the alien is in a lawful nonimmigrant status, or is not entitled to a removal proceeding, USCIS will initiate a removal proceeding. The Class Member may apply for adjustment of status before the immigration judge, unless the immigration judge lacks jurisdiction under 8 C.F.R. § 1245.2(a)(1).

IV. DISSEMINATION OF INFORMATION

17. On December 2, 2009, USCIS issued the Widow's Guidance to inform all relevant staff at USCIS District Offices and Service Centers about their responsibilities under section 568(c) of Public Law 111-83. This written guidance is also posted on the USCIS website.

18. USCIS also provided a copy of the December 2, 2009, Widow's Guidance to the U.S. Department of State so that the U.S. Department of State can inform embassies and consulates overseas regarding section 568(c) of Public Law 111-83 and its effect on Class Members who may seek immigrant visas, rather than adjustment of status.

19. Plaintiffs agree that nothing in this Stipulation shall limit Defendants' authority to promulgate regulations, issue policy directives and guidance, or to take other appropriate action, as necessary, without any notice to Plaintiffs, concerning the processing of related applications including, but not limited to, applications for adjustment of status and affidavit of support requirements.

V. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION

20. The parties agree that this Court will retain continuing jurisdiction for the duration of the Stipulation to supervise the implementation of this Stipulation and to enforce its terms, and that the terms of this Stipulation shall be incorporated into the Order of the Court approving the Settlement.

21. The parties agree that this Court will not be asked to exercise jurisdiction to supervise the implementation of this Stipulation or to enforce its terms until exhaustion of the dispute resolution process in paragraphs 22-24 has occurred.

22. Starting from the Approval Date, upon learning of any fact or facts that constitute the basis for asserting that a party, without notice or good cause shown, has completely and materially failed to perform an affirmative act imposed by the Stipulation in paragraphs 14-18, the initiating party shall promptly notify the other party in writing of the fact or facts that support the contention and request a written response with respect thereto. Such allegations of violations of this Stipulation must be substantiated with specific, detailed, and timely information about the violation sufficient to enable the responding party to investigate and respond. Within 30 days after receipt of the notice, the responding party shall notify the initiating party in writing of the responding party's position and any action it has taken or intends to take in connection therewith.

23. During the 60 days following the completion of the appropriate process outlined in paragraph 22, the parties shall negotiate in good faith in an effort to resolve any remaining disputes. The parties agree that this negotiation period will be considered exhausted if the negotiations have reached an impasse.

24. Should the parties be unable to resolve any issues raised between them, after exhausting all of the applicable procedures in paragraph 22-23, such issues must be raised before a Magistrate Judge of the Central District of California upon whom all parties agree, who shall hear, mediate, and, to the fullest extent possible, obtain the agreement of both parties to resolve the issue(s) in dispute.

V. TERMS OF ORDER FOR NOTICE, HEARING AND FINAL JUDGMENT

25. Concurrently with their filing of this Stipulation, Class Counsel and Defendants' Counsel shall jointly apply to the Court for preliminary Court approval of the Settlement contemplated by this Stipulation, *vacatur* of the injunction entered by the Court on April 28,

2009 as superseded by section 568 of the Department of Homeland Security Appropriations Act of 2010, and entry of a Preliminary Approval Order, substantially in the form appended hereto as Exhibit A. Such Preliminary Approval Order will include approval of a Notice to the Class, as well as a finding that the following satisfies the publication requirements of Fed. R. Civ. P. 23: within five business days of the date of the Court's preliminary approval of this Stipulation (A) both parties will post the Notice to the Class and this Stipulation in appropriate places on the USCIS and Parrilli Renison public websites, (B) Class Counsel will provide the Notice to the Class and this Stipulation for posting on the American Immigration Lawyers Association website, in addition to a number of popular websites utilized by immigrants and immigration lawyers, and including the website for the non-profit group Surviving Spouses Against Deportation, and (C) Defendants will distribute the Notice to the Class and this Stipulation through the USCIS Community Relations Program to the existing network of community-based and non-profit organizations which provide advice and assistance to immigrants.

26. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the parties shall request that the Court enter Final Judgment, vacating the injunction and dismissing all claims against Defendants with prejudice, substantially in the form appended hereto as Exhibit B.

27. Within 10 days following the Court's entry of the Final Judgment, the Parties will publish a Notice of Final Settlement Agreement according to the methods set forth in paragraph 25. The language of the Notice of Final Settlement Agreement will be agreed upon by the parties and will constitute an updated Notice to the Class.

VI. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

28. This Stipulation will be in effect as of the date when all of the following shall have occurred: (A) entry of the Preliminary Approval Order in all material respects in the form appended hereto as Exhibit A; (B) approval by the Court of this Stipulation, following Notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

and (C) entry by the Court of Final Judgment, in all material respects in the form appended hereto as Exhibit B.

29. In the event that the District Court's approval of the Stipulation or the Final Judgment referenced in paragraph 28(C) is voided on appeal, vacated, or terminated, the parties' good-faith adherence to the terms of this Stipulation prior to said voidance, *vacatur* or termination shall not be considered unlawful.

30. Defendants' Counsel or Class Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of (A) the Court's declining to enter the Preliminary Approval Order or modification of that Preliminary Approval Order in any material respect; (B) the Court's declining to approve the Settlement embodied in this Stipulation, or any material part of it; (C) the Court's declining to enter the Final Judgment or modification of the Final Judgment in any material respect; (D) the date upon which the Final Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or the United States Supreme Court; or (E) the date upon which an Alternative Judgment is modified, reversed, or vacated in any material respect by the Court, the Court of Appeals or by the United States Supreme Court.

31. Except as otherwise provided herein, in the event the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; the parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Stipulation; and except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered. In the event the Settlement is terminated or modified in any material respect, the Defendants shall be deemed not to have waived, modified, or be estopped from asserting any additional defenses available to them.

VII. TERMINATION OF OBLIGATIONS

32. The obligations set forth in this Stipulation shall terminate after two (2) years from the Approval Date without further action by the Court.

VIII. NO ADMISSION OF WRONGDOING

33. This Stipulation, whether or not executed, and any proceedings taken pursuant to it:

A. shall not be construed to waive, reduce or otherwise diminish the authority of Defendants to enforce the laws of the United States against Class Members notwithstanding the terms of this Stipulation, consistent with the Constitution, laws of the United States, and applicable regulations;

B. shall not be offered or received against Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Defendant of the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of Defendants; or any admission by Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and

C. shall not be offered or received against Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

IX. ATTORNEYS' FEES

34. Within 120 days of entry of a final judgment in this case approving this Stipulation, Defendants will deliver to Class Counsel the sum of \$125,000, in settlement of all

claims for attorneys' fees and costs that could have been or will be claimed in this litigation. This total includes \$4,787.80 in costs taxable under 28 U.S.C. § 1920. Defendants shall bear any costs incurred in connection with notifying the class of the terms and conditions of this Stipulation.

X. ADDITIONAL PROVISIONS

35. This Stipulation, and the obligations incurred herein, shall be in full and final disposition of the Action with prejudice and any and all Settled Claims against Defendants. On the Approval Date, Plaintiffs shall be deemed to have fully, finally, and forever released, relinquished, and discharged Defendants of and from any and all Settled Claims.

36. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

37. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

38. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

39. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto other than those contained and memorialized in such documents.

40. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Stipulation shall exchange among themselves original signed counterparts.

41. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

42. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by

counsel for one of the parties, it being recognized by the parties that this Stipulation is the result of arm's length negotiations between the parties and that all parties have contributed substantially and materially to the preparation of this Stipulation.

43. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

44. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Order in Connection with the Settlement Proceedings, the Stipulation and Agreement of Settlement, *vacatur* of the injunction entered by the Court on April 28, 2009, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

THE PLAINTIFFS

THE DEFENDANTS

BY: 

BY: 

Dated: Jan. 6, 2010

Jan. 19, 2010

1 TONY WEST
2 United States Department of Justice
3 Assistant Attorney General
4 ELIZABETH J. STEVENS VSB 47445
5 Assistant Director, District Court Section
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14 Attorneys for Defendants.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 CAROLYN ROBB HOOTKINS,)
19 et al.,)
20 Plaintiffs,)
21 v.)
22) Case No. CV07-05696 (CAS)
23 JANET NAPOLITANO,)
24 Secretary,) **[PROPOSED]**
25 U.S. Department of) **ORDER GRANTING PRELIMINARY**
26 Homeland Security,) **APPROVAL OF CLASS ACTION**
27 et al.,) **SETTLEMENT AND APPROVAL OF NOTICE**
28) **TO CLASS**
29 Defendants.)

1 Before the Court is the Joint Motion for Preliminary
2 Approval of Class Action Settlement and Approval of Notice To
3 Class (the "Motion") filed by Plaintiffs Carolyn Robb Hootkins,
4 Ana Maria Moncayo-Gigax, Suzanne Henriette De Maily, Sara Cruz
5 Vargas de Fisher, Raymond Lockett, Elsa Cecilia Brenteson,
6 Pauline Marie Gobeil, Rose Freeda Fishman-Corman, Khin Thidar
7 Win, Li Ju Lu, Purita Manuel Poindexter, Tracy Lee Rudl, and Dieu
8 Ngoc Nguyen, on behalf of themselves, the Class and all Class
9 Members and Defendants (collectively, the "Settling Parties").
10 Whereas the Settling Parties have reached an agreement to settle,
11 subject to approval of the Court pursuant to 23(e) of the Federal
12 Rules of Civil Procedure; the Court has read and considered the
13 Stipulation and Agreement of Settlement and Release (the
14 "Settlement Agreement") signed by the Settling Parties, which
15 sets forth the terms and conditions of the proposed settlement of
16 the Action; and the Settling Parties have consented to the entry
17 of this Order;

18
19
20 The Court has decided to GRANT the Motion.

21 **IT IS THEREFORE ORDERED THAT:**

22
23 1. This Order (the "Preliminary Approval Order")
24 incorporates by reference the definitions in the Settlement
25 Agreement, and all terms used herein have the same meanings as
26 set forth in that Settlement Agreement, unless otherwise defined
27 herein.

1 2. The terms of the Settlement Agreement are preliminarily
2 approved. The Court finds that the Settlement Agreement has no
3 obvious deficiencies, is within the bounds of a reasonable
4 settlement, and that the amount of attorneys' fees and expenses
5 is within the bounds of a reasonable settlement.
6

7 3. The Court approves, as to form and content, the Notice
8 to the Class ("Notice"), attached as Exhibit A to the Motion.

9 4. Within ten (10) days following the date of this Order,
10 Plaintiffs and Defendants shall publish the Notice as specified
11 in Paragraphs 25 and 27 of the Settlement Agreement.
12

13 5. Compliance with the procedures specified in Paragraph
14 25 of the Settlement Agreement satisfies the notice requirements
15 of Federal Rule of Civil Procedure 23(e).
16

17 6. The Court will hold a Final Settlement Hearing
18 ("Fairness Hearing") on _____, 2010, at _____, to determine
19 whether the terms of the Settlement Agreement are fair,
20 reasonable, and adequate and should be approved by the Court, and
21 to rule upon such other matters as the Court may deem
22 appropriate; and whether a Final Judgment, attached as Exhibit B
23 to the Settlement Agreement, should be entered and the Released
24 Parties should be released from the Settled Claims by the
25 Releasing Parties, as provided in the Settlement Agreement.
26

27 7. Any Class Member may appear at the Fairness Hearing and
28 show cause why the Settlement Agreement should not be approved as

1 fair, reasonable, and adequate; provided, however, that no Class
2 Member shall be entitled to contest the approval of the terms and
3 conditions of the Settlement Agreement, or, if approved, the
4 judgment thereon, unless he/she first submits written objections
5 in accordance with the instructions contained in the Notice.
6

7 8. Any Class Member who intends to make an appearance at
8 the Fairness Hearing, either in person or through counsel at that
9 Class Member's expense, must deliver to Class Counsel and
10 Defendants' Counsel and file with the Court, no later than five
11 (5) business days before the Fairness Hearing, a notice of
12 intention to appear and a statement identifying any documents the
13 Class Member will seek to introduce or witnesses the Class Member
14 will seek to call at the Fairness Hearing.
15

16 9. Any Class Member who fails to comply with paragraphs 7
17 and 8 of this Order shall waive and forfeit any and all rights
18 that Class Member may have to appear separately or object, or to
19 take any appeal of the orders of judgment in this action, and
20 shall be bound by all the terms of this Settlement Agreement, and
21 any other orders of the Court, upon final approval of the
22 settlement.
23

24 10. The Court may continue or adjourn the Fairness Hearing
25 from time to time and without further notice to the Class. The
26 Court reserves the right to approve or modify the Settlement
27 Agreement at any time as may be consented to by the Settling
28

1 Parties and without further notice to the Class. The Court
2 further reserves the right to enter an order of final judgment
3 and dismissal, dismissing the action with prejudice as to the
4 Defendants and against the Plaintiffs and the Class Members at
5 any time and without further notice to the Class.
6

7 11. The Court further reserves the right to vacate the
8 portions of the Order dated April 28, 2009 (docket 151) enjoining
9 and mandating actions by Defendants in adjudicating Class
10 Members' Form I-130 Petitions and Applications for Adjustment of
11 Status.
12

13 12. Without further order of the Court, the Settling
14 Parties may agree to reasonable extensions of time to carry out
15 any of the provisions of the Preliminary Approval Order.
16

17 **IT IS SO ORDERED.**
18

19 Date:

20 _____
21 HON. CHRISTINA A. SNYDER
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28