District Judge James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

NORTHWEST IMMIGRANT RIGHTS PROJECT, ET AL., Plaintiffs, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ET AL., Defendants.	Case No. C15-0813-JLR PLAINTIFFS' RENEWED MOTION FOR CLASS CERTIFICATION ORAL ARGUMENT REQUESTED NOTE ON CALENDAR: April 8, 2016

I. INTRODUCTION AND PROPOSED CLASS DEFINITION

Individual Plaintiffs filed this action to compel Defendants to comply with mandatory agency regulations requiring Defendants to either adjudicate employment authorization applications within a specific time period or, where the regulatory deadline has passed, issue interim employment authorization. This court denied, without prejudice, Plaintiffs' first motion for class certification. Plaintiffs have now filed an Amended Complaint and renew their request for class certification. The Amended Complaint alleges widespread, systemic delays impacting individuals throughout the country and causing substantial hardship to Individual Plaintiffs and the class they seek to represent. Accordingly, Individual Plaintiffs seek to represent a class to force Defendants to conform their policies and practices to the applicable regulations.

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, Individual
2 Plaintiffs respectfully move this Court to certify the following nationwide class and to appoint
3 all Individual Plaintiffs as class representatives of their respective subclasses, as identified
4 below:

5 Noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within the required regulatory timeframe, comprising those who:
6

7 1. Have filed or will file applications for employment authorization under 8 C.F.R. § 274a.13, excluding initial applications based on pending asylum applications or requests to renew Deferred Action for Childhood Arrivals, but who have not received or will not receive a grant or denial of their EAD applications within 90 days of filing, and who are entitled or will be entitled to interim employment authorization under 8 C.F.R. § 274a.13(d), but who have not received or will not receive interim employment authorization. Applications for employment authorization based on Deferred Action for Childhood Arrivals, U or T visa applications, and self-petitions under the Violence Against Women Act are excluded until USCIS has determined eligibility for the underlying immigration benefit or granted deferred action (the "90-Day Subclass"); or
8
9
10
11
12
13

14 2. Are asylum applicants who have filed or will file initial applications for employment authorization under 8 C.F.R. § 208.7, but who, absent any applicant-caused delay, have not received or will not receive a grant or denial of their EAD applications within 30 days of filing, and who have not received or will not receive interim employment authorization (the "30-Day Subclass"); or
15
16
17

18 3. Have filed or will file applications for employment authorization under 8 C.F.R. § 274a.13 on the basis of requests to renew Deferred Action for Childhood Arrivals, but who have not received or will not receive a grant or denial of their EAD applications within 90 days of filing, and who are entitled or will be entitled to interim employment authorization under 8 C.F.R. § 274a.13(d), but who have not received or will not receive interim employment authorization (the "DACA Renewal Subclass").
19
20
21
22
23
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

II. BACKGROUND

This action concerns three subclasses of individuals who are entitled to employment authorization under the Defendants' regulations, but have been or will be temporarily prevented from working lawfully due to Defendants' failure to comply with the applicable regulations: the "90-Day Subclass," the "30-Day Subclass," and the "DACA Renewal Subclass."

The 90-Day Subclass consists of individuals who are entitled to interim employment authorization due to Defendants' "failure to complete the adjudication [of an EAD application] within 90 days" from the date of receipt as required by the regulation. 8 C.F.R. § 274a.13(d). In such circumstances, the Defendants are required to grant "an employment authorization document for a period not to exceed 240 days." *Id.* Defendants have candidly admitted that they no longer produce interim EADs, notwithstanding the mandatory regulatory language. Dkt. 55 at 6 n.6 ("At oral argument, Defendants conceded that this is at least for the most part true.").[1] As a result, class members are suffering and will continue to suffer harm in the form of lost wages and benefits, lost employment opportunities, and for some individuals, including Plaintiffs L.S., MACHIC YAK and GONZALEZ ROSARIO, the inability to secure or maintain valid driver's licenses.[2]

---

[1] *See* Exh. A at 2 (Updated Lawrence Decl. ¶ 8). *See also* Exh. P at 3 (Letter to León Rodríguez from Ben Johnson, AILA Executive Director) (stating that USCIS "stopped issuing interim work authorization years ago").

[2] Exh. B at 2 (Matsumoto Decl. ¶ 9); Exh. C at 2 (Statler Decl. ¶ 6); Exh. D at 2-3 (Weisz Decl. ¶ 8). *See also* Exh. E at 2-3 (Updated Scheiderer Decl. ¶¶ 7-10); Exh. F at 2 (Supplemental McKenzie Decl. ¶ 8); Dkt. 5, Exh. E at 3-6 (McKenzie Decl. ¶¶ 8, 10-15). In many states, an EAD is one of the primary documents accepted to prove identity or lawful presence in order to obtain a driver's license. Exh. P at 3 (Letter to León Rodríguez from Ben Johnson, AILA Executive Director). *See e.g.*, Tenn. Department of Safety and Homeland Security, Proof of Temporary Legal Presence, https://www.tn.gov/safety/article/dltemporary (last visited March 10, 2016); Tex. Department of Public Safety, Identification Requirements, http://bit.ly/1gs8khA (last visited March 10, 2016); Wis. Department of Transportation, Acceptable Documents for Proof of Citizenship or Legal Status in the United States, http://1.usa.gov/1wUdkTV (last visited March 10, 2016).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 The requirement to grant interim employment authorization if an EAD has not been
2 adjudicated within 90 days applies to all but three kinds of work permit applications. First,
3 initial applications for employment authorization on the basis of pending asylum applications
4 have a different regulatory processing requirement of 30 (rather than 90) days, 8 C.F.R. §
5 208.7, which the Defendants also routinely violate.[3] Notably, applicants for asylum-based
6 EADs who are renewing their asylum EADs fall under the 90-day interim EAD provision. 8
7 C.F.R. § 274a.13(d) (the 90-day regulation excludes "an initial application for employment
8 authorization under 8 C.F.R. § 274a.12(c)(8) . . . .") (emphasis added). Thus, applicants seeking
9 to renew their asylum-based EADs are covered by the 90-day adjudication deadline, and the
10 associated interim EAD requirement. *Cf.* Order, Dkt. 55 at 19 (discussing Ms. Arcos' asylum-
11 based EAD renewal application but stating that all asylum-based EAD applicants are excluded
12 from § 274a.13(d)).[4]
13

14 [3] *See* Exh. E at 1 (Updated Scheiderer Decl. ¶ 5) (asserting that of the 58 initial asylum EAD applications filed between January 2014 and February 2016, none were issued within the 30-day
15 regulatory period, 20 were issued within 30 to 60 days, 22 were issued within 61 to 90 days, and 16 were issued over 90 days after filing). *See also* Dkt. 5, Exh. E at 2-3 (McKenzie Decl. ¶¶ 5-6)
16 (asserting that none of the ten initial asylum EAD applications filed between January 1, 2013 and May 13, 2015 were adjudicated within the 30-day regulatory time period; processing times
17 ranged from 45 to 100 days).

[4] The second exception is for individuals seeking employment authorization with a pending
18 permanent residence application under the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, §§ 901–904, 112 Stat. 2681 (1998), which has an additional waiting period of
19 180 days from filing the permanent residence application. 8 C.F.R. § 245.15(n)(2). Upon the expiration of this time period, if the EAD has been pending for 90 days and not adjudicated, "the
20 alien shall be eligible for interim employment authorization in accordance with 8 C.F.R. § 274a.13(d) of this chapter." *Id.* Note that "[DHS] receives very few applications for adjustment
21 of status based on HRIFA." Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 80 Fed. Reg. 81900, 81930
22 (proposed Dec. 31, 2015). *See id.* at 81930 n.87 (only 8 applications adjudicated in FY 2015). There also is an exception for EADs filed by spouses of certain H-1B specialty occupation
23 workers who apply to USCIS for the H-4 nonimmigrant classification at the same time they file an EAD application. In that limited circumstance, the 90-day time period does not start until
24 USCIS determines the spouse's eligibility for H-4 classification. *See* 8 C.F.R. § 214.2(h)(9)(iv).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 The "30-Day Subclass" is comprised of asylum applicants making their first application
2 for an asylum-based EAD, also called an initial asylum EAD. Asylum applicants are not
3 entitled to work authorization "prior to 180 days after the date of filing of the application for
4 asylum." 8 U.S.C. § 1158(d)(2). The Defendants' regulations implementing this provision
5 permit asylum applicants to file their applications for initial EADs only after 150 days have
6 elapsed since the filing of their underlying asylum applications. 8 C.F.R. § 208.7(a)(1).
7 Because USCIS sets a biometric appointment for the applicant immediately upon receiving the
8 applicant's asylum application, it is able to begin running security and other background checks
9 on the applicant months before the applicant submits his or her initial EAD application. Upon
10 receipt of a properly-filed application for an initial asylum EAD, Defendants are required to
11 grant or deny the application within 30 days:

12 > If an asylum application is denied prior to a decision on the application for employment authorization, the application for employment authorization shall be
13 > denied. If the asylum application is not so denied, the Service *shall have 30 days from the date of filing the employment authorization request to grant or deny that*
14 > *application*, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the
15 > asylum application . . . .

16 8 C.F.R. § 208.7(a)(1) (emphasis added).

17 Notwithstanding this mandatory directive, Defendants regularly fail to issue initial
18 asylum EADs to eligible asylum seekers until long after the 30-day period has expired.
19 Individuals who file initial applications for asylum-based EADs are also eligible for interim
20 employment authorization, per the Defendants' instructions to Form I-765:

21 > **Interim EAD:** An EAD issued to an eligible applicant when USCIS has failed to adjudicate an application within 90 days of a properly filed EAD application, *or*
22 > *within 30 days of a properly filed initial EAD application based on an asylum*
23 > *application* filed after January 4, 1995. The interim EAD will be granted for a period not to exceed 240 days . . . .

24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 U.S. Citizenship and Immigration Services, Instructions for I-765, Application for Employment
2 Authorization at 1 (emphasis added), *available at* http://www.uscis.gov/i-765.[5] Yet, as the
3 Defendants have candidly admitted, they no longer produce interim EADs. Dkt. 55 at 6 n.6.

4 The members of the "DACA Renewal Subclass" are those who have been harmed by
5 Defendants' delays in adjudicating requests to renew work authorization in conjunction with an
6 extension of Deferred Action for Childhood Arrivals. These EAD applications are governed by
7 the same regulatory deadline applicable to the 90-Day Subclass, 8 C.F.R. § 274a.13(d).

8 Accordingly, the Plaintiffs urge this Court to certify three subclasses as follows: the 90-
9 Day Subclass with Plaintiffs GONZALEZ ROSARIO, L.S., K.T., DIAZ MARIN, SALMON,
10 SHAH, and ARCOS-PEREZ as class representatives, the 30-Day Subclass with Plaintiffs A.A.,
11 MACHIC YAC and W.H. as class representatives, and the DACA Renewal Subclass with
12 Plaintiff OSORIO BALLESTEROS as the class representative.

13 **III. CLASS CERTIFICATION**

14 Upon a showing that the requirements of Rule 23(a) and (b)(2) have been met,
15 numerous district courts within the Ninth Circuit have certified classes of noncitizens who
16 challenge immigration policies and practices. *See, e.g., Khoury v. Asher*, 3 F. Supp. 3d 877
17 (W.D. Wash. 2014) (certifying district-wide class of certain noncitizens subject to mandatory
18 detention); *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (reversing district court order
19 denying class certification for class of immigration detainees subject to prolonged detention);
20 *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194 (W.D. Wash. 2008) (certifying district-wide class
21 of certain individuals with delayed naturalization cases); *Santillan v. Ashcroft*, No. 04-2686
22 MHP, 2004 U.S. Dist. LEXIS 20824 (N.D. Cal. Oct. 12, 2004) (certifying nationwide class of

23
[5] Regulations provide that "such instructions are incorporated into the regulations." 8 C.F.R. §
24 103.2(a)(1).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 lawful permanent residents challenging delays in receiving documentation of their status);
2 *A.B.T. v. United States Citizenship & Immigration Servs.*, No. 11-2108, 2013 U.S. Dist.
3 LEXIS 160453 *at* *11 (W.D. Wash. Nov. 4, 2013) (approving settlement and certifying
4 nationwide class of persons in removal proceedings challenging procedures governing the
5 ability of asylum applicants to work while their asylum applications are pending). Like these
6 cases, the instant action satisfies the requirements for class certification under Rule 23(a) and
7 (b)(2). Each of these requirements is discussed below.

8 **IV. THIS ACTION SATISFIES THE CLASS CERTIFICATION REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23(a).**

9

A. Joinder of the Proposed Class Members Is Impracticable.

10

1. The Class Size Makes Joinder Impracticable.

11 Rule 23(a)(1) requires that the class be "so numerous that joinder is impracticable."
12 "[I]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience of
13 joining all members of the class." *Harris v. Palm Springs Alpine Est., Inc.*, 329 F.2d 909, 913-
14 14 (9th Cir. 1964) (citation omitted). No fixed number of class members is required. *Perez-*
15 *Funez v. District Director, INS*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *Hum v. Dericks*, 162
16 F.R.D. 628, 634 (D. Haw. 1995). In fact, courts have found impracticability of joinder when
17 relatively few class members are involved. *See Arkansas Educ. Ass'n v. Board of Educ.*, 446
18 F.2d 763, 765-66 (9th Cir. 1971) (finding 17 class members sufficient); *McCluskey v. Trustees*
19 *of Red Dot Corp. Employee Stock Ownership Plan and Trust*, 268 F.R.D. 670, 674-76 (W.D.
20 Wash. 2010) (certifying class with 27 known members).
21 "Numerousness—the presence of many class members—provides an obvious situation
22 in which joinder may be impracticable, but it is not the only such situation." W. Rubenstein &
23 A. Conte, 1 Newberg on Class Actions § 3:11 (5th ed. 2014). "Thus, Rule 23(a)(1) is an
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 impracticability of joinder rule, not a strict numerosity rule. It is based on considerations of due
2 process, judicial economy, and the ability of claimants to institute suits." *Id.* Where it is a close
3 question, the Court should certify the class. *Stewart v. Associates Consumer Discount Co.*, 183
4 F.R.D. 189, 194 (E.D. Pa. 1998) ("where the numerosity question is a close one, the trial court
5 should find that numerosity exists, since the court has the option to decertify the class later
6 pursuant to Rule 23(c)(1)"). Determining whether plaintiffs meet the test "requires examination
7 of the specific facts of each case and imposes no absolute limitations." *Troy v. Kehe Food*
8 *Distributors,* 276 F.R.D. 642, 652 (W.D. Wash. 2011) (citing *Gen. Tel. Co. of the Northwest,*
9 *Inc. v. EEOC*, 446 U.S. 318, 330 (1980)).
10 Moreover, in certifying classes of noncitizens, courts have taken notice of
11 circumstances in which "INS [now DHS] is uniquely positioned to ascertain class
12 membership." *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (requiring
13 Defendants to provide notice to class members). Where DHS has control of the information
14 proving the impracticability of joinder and does not make such information available, it would
15 be improper to allow the agency to defeat class certification on numerosity grounds. Currently,
16 it is not possible to determine the length of time the agency will take to adjudicate EAD
17 applications. Though the agency publishes the number of EAD applications filed each fiscal
18 year and the processing times for various applications, it does not publish processing times that
19 are reliable indicators of the actual time the agency will take to adjudicate these applications.
20 However, according to the USCIS Ombudsman's most recent Annual Report, "every year
21 thousands of eligible individuals encounter processing delays".[6]
22 Despite these limitations, Plaintiffs have provided compelling evidence that the class of
23 individuals subject to EAD adjudication delays is numerous and that joinder is impracticable.

24 [6] Dkt. 24-1, Exh. A at 48 (USCIS Ombudsman 2015 Annual Report).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

Between November 2014 and February 2016, the American Immigration Lawyers Association (AILA) collected over 440 examples of EAD adjudication delays in cases handled by AILA members throughout the country. *See* Exh. A at 2 (Updated Lawrence Decl. ¶ 9). Various non-profit organizations and immigration lawyers also have reported a significant number of EAD adjudication delays over the past few years.[7] USCIS did not provide notice of adjudication delays or issue interim EADs in any of these cases.[8] In light of the declarants' statements regarding the pervasiveness of EAD delays, this Court can reasonably assume that the class is numerous. *See Ali v. Ashcroft,* 213 F.R.D. 390, 408 (W.D. Wash. 2003) ("the Court does not need to know the exact size of the putative class, 'so long as general knowledge and common sense indicate that it is large'") (citing *Perez-Funez*, 611 F. Supp. at 995), *aff'd,* 346 F.3d 873, 886 (9th Cir. 2003), *vacated on other grounds,* 421 F.3d 795 (9th Cir. 2005); Newberg on Class Actions § 3:13 ("it is well settled that a plaintiff need not allege the exact number or specific identity of proposed class members").

Joinder is also inherently impracticable because of the unnamed, unknown future class members who will be subjected to Defendants' unlawful refusal to comply with mandatory

[7] *See, e.g.,* Exh. E at 1-2 (Updated Scheiderer Decl. ¶¶ 5-6); Exh. G at 2-3 (Updated Oskouian Decl. ¶¶ 4-5) (asserting that, of 101 applications filed by the Northwest Immigrant Rights Project between November 2014 and early 2015, 21 were adjudicated after the regulatory deadline, including 7 initial asylum EAD applications and 14 applications subject to the 90-day deadline); Exh. H at 1 (Updated McCarthy Decl. ¶¶ 3-4) (asserting that, of approximately 400 EAD applications filed by the National Immigrant Justice Center (NIJC) during calendar year 2015, approximately 53 clients did not receive an EAD within 90 days of filing or within the 30-day period for initial asylum-based EAD applications); Exh. I at 1 (Updated Cortes Decl. ¶¶ 3-4) (asserting that, of approximately 70 EAD applications filed by the Migrant and Immigrant Community Action Project (MICA) within the past year, approximately 20 clients did not receive their EADs within the regulatory time period); Exh. J at 1 (Updated Collopy Decl. ¶¶ 3-4) (asserting that she and her two partners file "approximately 80-90 EAD applications each year" and, since the spring of 2014, have "seen an increase in EADs not being issued to our clients within the required time frame"); Dkt. 5, Exh. B at 1 (Parson Decl. ¶¶ 4-5); Dkt. 5, Exh. C at 1 (Cortez decl. ¶ 3); Dkt. 5, Exh. D at 1 (Segal Decl. ¶ 4).

[8] *See, e.g.,* Exh. G at 3 (Updated Oskouian Decl. ¶ 5); Exh. H at 1 (Updated McCarthy Decl. ¶ 4); Exh. I at 1 (Updated Cortes Decl. ¶ 4); Exh. J at 1 (Updated Collopy Decl. ¶ 4).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 regulations governing the timetable for adjudication of employment authorization applications.
2 *Ali*, 213 F.R.D. at 408-09 ("'where the class includes unnamed, unknown future members,
3 joinder of such unknown individuals is impracticable and the numerosity requirement is
4 therefore met,' regardless of class size.") (citations omitted); *see also Hawker v. Consovoy*, 198
5 F.R.D. 619, 625 (D.N.J. 2001) ("The joinder of potential future class members who share a
6 common characteristic, but whose identity cannot be determined yet is considered
7 impracticable."); *Smith v. Heckler*, 595 F. Supp. 1173, 1186 (E.D.Cal. 1984) ("Joinder in the
8 class of persons who may be injured in the future has been held impracticable, without regard
9 to the number of persons already injured"). Future unnamed, unknown class members will be
10 unable to obtain EADs in a timely manner and will suffer a loss of income and possibly their
11 jobs, and employers will be forced to forgo hiring or lay off qualified workers.

12 2. Other Relevant Factors Also Indicate That Joinder Would Be Impracticable.

13 In addition to class size and future class members, factors that inform the
14 impracticability of joinder include: "[1] the geographical diversity of class members, [2] the
15 ability of individual claimants to institute separate suits, and [3] whether injunctive or
16 declaratory relief is sought." *McCluskey v. Tr. of Red Dot Corp. Employee Stock Ownership*
17 *Plan and Trust*, 268 F.R.D. 670, 674 (W.D. Wash. 2010) (quoting *Jordan v. Los Angeles*
18 *County*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982)).
19 Application of these factors also establishes the impracticability of joinder in the present case.

20 The attached declarations from lawyers and nonprofit organizations from across the
21 United States leave no doubt about the geographical diversity of the proposed class members.
22 Evidence from the nonprofit organizations establishes that USCIS regularly takes longer than
23 the regulatory time period to adjudicate EAD applications in numerous states across the
24 country. *See* Exh. E at 1-2 (Updated Scheiderer Decl. ¶¶ 1-2, 5-6) (Michigan); Exh. F at 1-2

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 (Supplemental McKenzie Decl. ¶¶ 1, 4-8) (Minnesota); Exh. G at 1-3 (Updated Oskouian Decl.
2 ¶¶ 1, 5-6) (Washington); Exh. H at 1 (Updated McCarthy Decl. ¶¶ 2-4) (Wisconsin, Indiana,
3 and Illinois); Exh. I at 1 (Updated Cortes Decl. ¶¶ 2-4) (Missouri); Exh. P at 3 (Letter to León
4 Rodríguez from Ben Johnson, AILA Executive Director) ("Applications for employment
5 authorization are particularly problematic, and the issue of lengthy delays has risen to the level
6 of systemic on a number of occasions over the past few years."). *See also* Dkt 5, Exhs. B
7 (Texas), C (California), D (New York) (immigration practitioners discussing EAD adjudication
8 delays). The far-reaching nature of this problem makes joinder impracticable and militates in
9 favor of class certification.

10 Moreover, the proposed class members would have great difficulty pursuing their
11 claims individually due to a variety of factors, including lack of representation, lack of
12 awareness that a cause of action exists, and/or fear of government retaliation. Numerous
13 courts have found that joinder would be impracticable under comparable circumstances. *See,*
14 *e.g., United States ex rel. Morgan v. Sielaff*, 546 F.2d 218, 222 (7th Cir. 1976) ("Only a
15 representative proceeding avoids a multiplicity of lawsuits and guarantees a hearing for
16 individuals . . . who by reason of ignorance, poverty, illness or lack of counsel may not have
17 been in a position to seek one on their own behalf."); *Sherman v. Griepentrog*, 775 F. Supp.
18 1383, 1389 (D. Nev. 1991) (holding that "poor, and elderly or disabled" plaintiffs dispersed
19 over a wide geographic area "could not without great hardship bring multiple lawsuits"). In
20 this case, the likelihood that any significant number of eligible individual class members
21 would sue USCIS for failure to timely adjudicate an EAD application is minimal. During the
22 twenty-eight years since 8 C.F.R. § 274a.13(d) was promulgated, plaintiffs are aware of only a
23 handful of cases that have challenged Defendants' failure to timely adjudicate EAD claims or
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 issue interim employment authorization.[9] In contrast to such piecemeal efforts, a unified
2 proceeding would permit resolution of the disputed issues in a systemic manner and result in a
3 uniform practice, should Plaintiffs prevail.

4 Equity favors class certification where class members lack the financial means to afford
5 legal assistance. *Lynch v. Rank,* 604 F. Supp. 30, 38-39 (N.D. Cal. 1984) (certifying class of
6 "poor and disabled" plaintiffs represented by public interest law groups), *aff'd* 747 F.2d 528
7 (9th Cir. 1984). Here, class members' limited means stems directly from their lack of
8 employment authorization, which limits their ability to support themselves and their families.[10]
9 This predicament makes it virtually impossible for class members to individually retain counsel
10 to challenge the Defendants' illegal actions.

11 Judicial economy also favors certification in this case. The requirements of the
12 Defendants' regulations are clear, as is Defendants' pattern and practice of violating the
13 regulations. Requiring applicants for employment authorization to file separate lawsuits every
14 time the agency fails to timely adjudicate EAD applications would be a waste of judicial
15 resources.

16

[9] For example, in *Ramos v. Thornburgh*, 732 F. Supp. 696 (E.D. Tex. 1989), five plaintiffs
17 alleged that "their requests for temporary employment authorization ha[d] been pending for more than sixty days without adjudication, and that they ha[d] not received interim
18 employment authorization." 732 F. Supp. at 698. *See also Najera-Borja v. McElroy,* No. 89-2320, 1995 WL 151775 *1 (E.D.N.Y. Mar. 29, 1995) (court previously certified class of
19 asylum applicants, including those whose employment authorization applications were not adjudicated within 90 days due to failure to appear at an interview for which they did not have
20 notice, and ordered agency to provide interim employment authorization); *Doe v. Meese*, 690 F. Supp. 1572 (S.D. Tex. 1988) (granting preliminary injunction to named plaintiffs regarding
21 agency's failure to issue interim employment authorization); *Elmalky v. Upchurch*, No. 06-2359, 2007 U.S. Dist. LEXIS 22353 (N.D. Tex. Mar. 28, 2007) (denying agency's motion to
22 dismiss delayed EAD adjudication claim).

[10] *See, e.g.,* Exh. C at 2 (Statler Decl. ¶ 6); Exh. K at 2 (Walls Decl. ¶ 6); Exh. G at 5 (Updated
23 Oskouian Decl. ¶ 10); Exh. H at 1-2 (Updated McCarthy Decl. ¶¶ 5-6); Dkt 5, Exh. E at 3-4 (McKenzie Decl. ¶ 8).

24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 In addition, where, as here, injunctive or declaratory relief is sought, the requirements
2 of Rule 23 are more flexible. *See Goodnight v. Shalala*, 837 F. Supp. 1564, 1582 (D. Utah
3 1993). In such cases, smaller classes are less objectionable and the plaintiffs' burden to identify
4 class members is substantially reduced. *See Weiss v. York Hospital*, 745 F.2d 786, 808 (3d Cir.
5 1984) (citing *Horn v. Associated Wholesale Grocers, Inc*., 555 F.2d 270, 276 (10th Cir. 1977)
6 and *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975)); *Doe v. Charleston Area Medical*
7 *Ctr*., 529 F.2d 638, 645 (4th Cir. 1975) ("Where 'the only relief sought for the class is
8 injunctive and declaratory in nature . . .,' even 'speculative and conclusory representations' as
9 to the size of the class suffice as to the requirement of many.") (citation omitted). Plaintiffs
10 seek only declaratory and injunctive relief. Because Plaintiffs satisfy the stricter numerosity
11 requirement of Rule 23(a)(1), *a fortiori*, they meet the requirements of the rule when liberally
12 construed.
13 Moreover, where the class is inherently transitory and "includes unnamed, unknown
14 future members," joinder also is impracticable. *Ali v. Ashcroft*, 213 F.R.D. 390, 408-09 (W.D.
15 Wash. 2003), *aff'd*, 346 F.3d 873, 886 (9th Cir. 2003), *vacated on other grounds*, 421 F.3d 795
16 (9th Cir. 2005) (citations omitted). *See also Pederson v. Louisiana State Univ*., 213 F.3d 858,
17 868 n.11 (5th Cir. 2000) ("the fact that the class includes unknown, unnamed future members
18 also weighs in favor of certification"); *Henderson v. Thomas*, 289 F.R.D. 506, 510 (M.D. Ala.
19 2012) ("[T]he fluid nature of a plaintiff class—as in the prison-litigation context—counsels in
20 favor of certification of all present and future members.").
21 Plaintiffs' individual EAD delay claims likely will be resolved during the pendency of
22 this matter, when Defendants eventually adjudicate their underlying employment authorization
23 applications, though weeks or months after the regulations require them to have done so. In
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

addition, every day, new members will be added to the proposed class because Defendants are not adjudicating their EAD applications in accordance with the regulatory timetable, and Defendants refuse to issue interim employment authorization.[11] Due to the fluid nature of the class and the numerous unnamed future class members, joinder is impracticable.

B. The Class Presents Common Questions of Law and Fact.

Rule 23(a)(2) requires that there be questions of law or fact common to the class. To satisfy the commonality requirement, "[a]ll questions of fact and law need not be common." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). To the contrary, one shared legal issue can be sufficient. *See, e.g., Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) ("What makes the plaintiffs' claims suitable for a class action is the common allegation that the INS's procedures provide insufficient notice."); *Rodriguez*, 591 F.3d at 1122 ("[T]he commonality requirement [] asks us to look only for some shared legal issue or a common core of facts.").

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982)). In determining that a common question of law exists, the putative class members' claims "must depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is

[11] *See* Exh. G at 3 (Updated Oskousian Decl. ¶ 6 ("Those subject to delayed EAD adjudications are a frequently changing group. Just as some clients with delayed EADs receive a decision, other clients' pending applications pass the regulatory deadline."); Exh. H at 4 (Updated McCarthy Decl. ¶ 14 ("Delays in the production of EADs, without the opportunity to obtain interim employment authorization, have devastating effects on the lives of NIJC clients and their families."); Exh. A at 2 (Updated Lawrence Decl. ¶ 7) (noting that "spikes in reports of EAD delays eventually subside," but that AILA's "experience has been that an increase in reports of EAD adjudication delays ultimately recurs").

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 central to the validity of each one of the claims in one stroke." *Id*. Thus, "[w]hat matters to
2 class certification is not the raising of common 'questions' . . . but, rather the capacity of a class
3 wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.*
4 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L.
5 Rev. 97, 132 (2009)).

6 All the Individual Plaintiffs and proposed class members have been or will be forced to
7 suffer the consequences of USCIS's failure to timely adjudicate their EAD applications and the
8 agency's failure to grant interim employment authorization as required by agency regulations.
9 Their cases raise a common question of fact, namely, whether USCIS has a policy and practice
10 of failing to issue interim employment authorization to individuals who are entitled to it based
11 on the agency's failure to comply with the regulatory timetable for EAD adjudications. They
12 also raise a common question of law — namely, whether the Defendants' policy and practice of
13 failing to issue interim employment authorization to those who are entitled to it violates the
14 relevant regulations. Should Plaintiffs prevail, all who fall within the class and subclasses will
15 benefit. Thus, a common answer regarding the legality of each challenged policy and practice
16 "will drive the resolution of the litigation." *Ellis*, 657 F.3d at 981 (citing *Dukes*, 131 S. Ct. at
17 2551); *see also Unthaksinkun v. Porter*, 2011 U.S. Dist. LEXIS 111099, *at* *38 (W.D. Wash.
18 Sept. 28, 2011) (finding that, because all class members alleged the same agency conduct
19 violated their constitutional rights, the court's ruling as to the legality of the conduct would
20 apply to all).

21 Although factual variations in individual cases may exist, these are insufficient to defeat
22 commonality. *Califano v. Yamasaki,* 442 U.S. 682, 701 (1979) ("It is unlikely that differences
23 in the factual background of each claim will affect the outcome of the legal issue."); *Walters*,
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 145 F.3d at 1046 ("Differences among the class members with respect to the merits of their
2 actual document fraud cases, however, are simply insufficient to defeat the propriety of class
3 certification"). This case turns on the existence of a policy and practice, which applies equally
4 to all class members regardless of any factual differences. Courts have affirmed that such
5 factual questions are well-suited to resolution on a classwide basis. *See, e.g., Stockwell v. City*
6 *& County of San Francisco*, 749 F.3d 1107, 1114 (9th Cir. 2014) (reversing denial of class
7 certification motion because movants had "identified a single, well-enunciated, uniform
8 policy" that was allegedly responsible for the harms suffered by the class). Moreover, "the
9 court must decide only once whether the application" of Defendants' policies and practices
10 "does or does not violate" the law. *Troy,* 276 F.R.D. *at* 654; *see also LaDuke v. Nelson*, 762
11 F.2d 1318, 1332 (9th Cir. 1985) (holding that the constitutionality of an INS procedure
12 "[p]lainly" created common questions of law and fact). As such, resolution on a classwide basis
13 also facilitates practical and efficient case management, which is one of the key purposes of the
14 commonality requirement. *See Rodriguez,* 591 F.3d at 1122.

15 **C. The Claims of the Individual Plaintiffs are Typical of the Claims of the Proposed Class Members.**

16 Rule 23(a)(3) specifies that the claims of the representatives must be "typical of the
17 claims . . . of the class." Meeting this requirement usually follows from the presence of
18 common questions of law. *Falcon*, 457 U.S. *at* 157 n.13. To establish typicality, "a class
19 representative must be part of the class and 'possess the same interest and suffer the same
20 injury' as the class members." *Id.* at 156 (citation omitted). As with commonality, factual
21 differences among class members do not defeat typicality provided there are legal questions
22 common to all class members. *LaDuke,* 762 F.2d at 1332 ("The minor differences in the
23 manner in which the representative's Fourth Amendment rights were violated does not render
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

their claims atypical of those of the class."); *Smith v. University of Wash. Law Sch.,* 2 F. Supp. 2d 1324, 1342 (W.D. Wash. 1998) ("When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually satisfied, irrespective of varying fact patterns which underlie individual claims.") (citation omitted).

The claims of the Individual Plaintiffs, all of whom filed EAD applications that have remained pending beyond the strict regulatory deadlines for adjudication, are typical of the claims of the proposed class. Each Individual Plaintiff has suffered concrete harms as a result of the Defendants' actions.[12] Thus Individual Plaintiffs, like all members of the proposed class, seek declaratory and injunctive relief from this Court directing the Defendants to adjudicate EAD applications in a timely manner and, where the regulatory time period has elapsed, issue interim employment authorization.

Because the Individual Plaintiffs and proposed class members are united in their interests and injury and their cases raise common factual and legal claims, the element of typicality is met.

D. The Individual Plaintiffs Will Adequately Protect the Interests of the Proposed Class, and Counsel are Qualified to Litigate this Action.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "Whether the class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a

[12] *See* Exh. L at 2-3 (Drake Decl. ¶¶ 8-9); Exh. B at 2-3 (Matsumoto Decl. ¶ 9); Exh. Q at 2 (McGrath Decl. ¶ 8); Exh. M at 1-2 (Pauw Decl. ¶ 6); Exh. K at 2 (Walls Decl. ¶ 6); Exh. C at 2 (Statler Decl. ¶ 6); Exh. N at 1-2 (Shah Decl. ¶¶ 5-6); Exh. D at 2-3 (Weisz Decl. ¶ 8). *See also* Dkt. 5, Exh. K at 1-2 (Arcos-Perez Decl. ¶¶ 6-7); Dkt. 5, Exh. L at 3-4 (Hoffmann Decl. ¶¶ 11, 15-16); Dkt. 5, Exh. M at 3 (Brown Decl. ¶ 8).

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 sharing of interests between representatives and absentees, and the unlikelihood that the suit is
2 collusive.'" *Walters*, 145 F.3d at 1046 (citation omitted).

3 1. The Individual Plaintiffs Will Protect the Interests of the Class.

4 The Individual Plaintiffs will fairly and adequately protect the interests of the proposed
5 class because their interests are consistent with those of proposed class members and they seek
6 relief on behalf of the class as a whole. Their mutual goal is to declare Defendants' challenged
7 policies and practices unlawful and to enjoin further violations of the regulations governing the
8 timetable for adjudication of EAD applications and the granting of interim employment
9 authorization.

10 All the Individual Plaintiffs have filed EAD applications that have remained pending
11 longer than the regulations permit. In the case of the 30-Day Subclass, the EAD applications
12 have remained pending longer than 30 days without being granted or denied by Defendants, as
13 required by the governing regulation. 8 C.F.R. § 208.7(a)(1). Despite this regulatory violation,
14 Individual Plaintiffs have not received interim employment authorization. As to the 90-Day and
15 DACA Renewal Subclasses, the EAD applications have remained pending longer than 90 days,
16 and the Defendants have failed to comply with the mandate that they provide interim
17 employment authorization with a validity period not to exceed 240 days. 8 C.F.R. § 274a.13(d).
18 The Individual Plaintiffs share a common interest with all class members in the timely
19 adjudication of their pending EAD applications or receipt of interim employment authorization.

20 Some Individual Plaintiffs' EAD applications will have been adjudicated by the time
21 this motion is decided. This does not impact their ability to fairly and adequately represent the
22 class. *Perez-Funez v. District Director, INS*, 611 F. Supp. 990, 1000 (C.D. Cal. 1984) (finding
23 that an immigration detainee representative who won immigration relief and thus left the class
24 would be an adequate class representative). The short-term nature of the class members' injury

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 makes their claims "inherently transitory" and protected under the "relation back doctrine."
2 Under this doctrine, the certification of the class will "relate back" to the original complaint
3 despite the fact that a named plaintiff's individual claim has become moot. *See County of*
4 *Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (the "relation back doctrine" is appropriate
5 where "claims are so inherently transitory that the trial court will not have even enough time to
6 rule on a motion for class certification before the proposed representative's individual interest
7 expires"); *Pitts v. Terrible Herbst*, 653 F.3d 1081, 1089 (9th Cir. 2011) ("[T]he termination of a
8 class representative's claim does not moot the class claims.").

9 The Supreme Court has repeatedly held that class relief is appropriate for transitory
10 claims. For example, in *Gerstein v. Pugh*, the Court considered the viability of a class action
11 on behalf of pretrial detainees challenging the constitutionality of their detention. By the time
12 the case reached the Supreme Court, each of the class representatives had been convicted, and
13 thus were no longer members of the class they purported to represent. This was no obstacle to
14 class relief in the case because

15 > Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is
16 > either released or convicted. The individual could nonetheless suffer repeated deprivations, and it is certain that other persons similarly situated will be detained
17 > under the allegedly unconstitutional procedures. The claim, in short, is one that is distinctly "capable of repetition, yet evading review."

18 *Gerstein v. Pugh*, 420 U.S. 103, 110 n. 11 (1975).

19 Under the "capable of repetition but evading review" doctrine, the named plaintiffs may
20 proceed even though their interest in the suit has expired, as long as the duration of the
21 challenged conduct is too short to be resolved through litigation and the case challenges an
22 ongoing agency policy or practice. *See, e.g.*, *Los Angeles Unified School District v. Garcia*, 669
23 F.3d 956, 958 n.1 (9th Cir. 2012) (challenge to school district's ongoing failure to provide
24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 special education services to children held in county jail was not moot even though the named
2 plaintiff had aged out and been transferred to state prison); *United States v. Howard*, 480 F.3d
3 1005, 1009-1010 (9th Cir. 2007) (case was not moot where policy still required all pretrial
4 detainees to be held in leg shackles at their first court appearance, even though it was purely
5 speculative whether plaintiffs would ever be subjected to it again); *Oregon Advocacy Ctr. v.*
6 *Mink*, 322 F.3d 1101, 1118 (9th Cir. 2003) (plaintiffs' claims not moot when hospital policy
7 resulted in continually recurring delays in the transfer of mentally incapacitated criminal
8 defendants to the hospital). Here, the Individual Plaintiffs' EAD applications may be
9 adjudicated before the Court rules on the class certification motion, but the problem—which
10 reflects a longstanding agency policy—will inevitably recur. Defendants' policy and practice
11 violates the regulations dictating that EAD applications must be adjudicated within a specific
12 time period. "[Y]et, because of the passage of time, no single challenger will remain subject to
13 its restrictions for the period necessary to see such a lawsuit to its conclusion." *Sosna v. Iowa*,
14 419 U.S. 393, 558 (1975). As a result, Defendants' unlawful conduct in this case will never be
15 redressed absent class-wide relief.

16 2. Class Counsel Are Qualified To Represent the Class.

17 The adequacy of Plaintiffs' counsel is also satisfied here. Counsel are deemed qualified
18 when they can establish their experience in previous class actions and cases involving the same
19 area of law. *See, e.g., Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff'd* 747 F.2d 528
20 (9th Cir. 1984), *amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985); *Marcus v. Heckler*, 620 F.
21 Supp. 1218, 1223-24 (N.D. Ill. 1985); *Adams v. Califano*, 474 F. Supp. 974, 979 (D. Md.
22 1979), *aff'd sub nom. Adams v. Harris*, 643 F.2d 995 (4th Cir. 1981).

23 Plaintiffs are represented by counsel from the American Immigration Council,
24 Northwest Immigrant Rights Project, and four private law firms that do extensive immigration

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

litigation — Gibbs Houston Pauw, Scott D. Pollock & Associates, P.C., Van Der Hout, Brigagliano & Nightingale, LLP, and Sunbird Law, PLLC. Counsel are experienced in protecting the interests of noncitizens and, collectively, have extensive experience in handling complex immigration litigation and class action claims.[13] Counsel have served as counsel of record in numerous immigration-related cases in which class certification and class relief were granted, including several in this district. In sum, Plaintiffs' counsel will vigorously represent both the named and absent class members.

V. THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(b)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet at least one of the requirements of Rule 23(b) for a class action to be certified. This action meets the requirements of Rule 23(b)(2), namely "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Individual Plaintiffs challenge—and seek declaratory and injunctive relief from—systemic policies and practices that consistently prevent the timely adjudication of EAD applications that they and other proposed class members have submitted. Accordingly, classwide relief is appropriate under Rule 23(b)(2). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (finding certification under Rule 23(b)(2) appropriate "only where the primary relief sought is declaratory or injunctive"), *amended by* 273 F.3d 1180 (9th Cir. 2001).

VI. CONCLUSION

Plaintiffs' Amended Complaint alleges that Defendants continue to violate mandatory regulatory language intended to protect noncitizens' right to seek lawful employment while

[13] *See* Exh. O (Theriot-Orr Updated Decl.). *See also* Dkt. 5, Exh. N, O, P, Q, and R (Declarations of Counsel). Defendants have not challenged the qualifications of class counsel in this matter.

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1 their immigration cases are pending. The Court should certify three proposed subclasses as
2 follows: the 90-Day Subclass with Plaintiffs GONZALEZ ROSARIO, L.S., K.T., DIAZ
3 MARIN, SALMON, SHAH, and ARCOS-PEREZ as class representatives; the 30-Day
4 Subclass with Plaintiffs A.A., MACHIC YAC and W.H. as class representatives; and the
5 DACA Renewal Subclass with Plaintiff OSORIO BALLESTEROS as the class representative.

6 This will enable the Individual Plaintiffs to seek redress for themselves and all
7 similarly-situated individuals who are experiencing ongoing harm as a result of the
8 Defendants' actions.

9 Respectfully submitted this 11th day of March, 2016.

10 */s/ Devin T. Theriot-Orr*
Devin Theriot-Orr, WSBA No. 33995
11 Sunbird Law, PLLC
1001 4th Avenue, Suite 3200
12 Seattle, WA 98154
(206) 962-5052
13
/s/ Christopher Strawn
14 Christopher Strawn, WSBA No. 32243
Northwest Immigrant Rights Project
15 615 Second Avenue, Suite 400
Seattle, WA 98104
16 (206) 957-8611

17 */s/ Melissa Crow*
Melissa Crow (*pro hac vice*)
18 Leslie K. Dellon (*pro hac vice*)
American Immigration Council
19 1331 G Street, NW, Suite 200
Washington, DC 20005
20 (202) 507-7523

21 */s/ Robert H. Gibbs*
Robert H. Gibbs, WSBA No. 5932
22 Robert Pauw, WSBA No. 13613
Gibbs Houston Pauw
23

24

SunbirdLaw
1001 4th Avenue, Suite 3200
Seattle, WA 98154
Ph (206) 962-5052
Fax (206) 681-9663

1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
(206) 682-1080

/s/ Scott D. Pollock
Scott D. Pollock (*pro hac vice*)
Christina J. Murdoch (*pro hac vice*)
Kathryn R. Weber (*pro hac vice*)
Scott D. Pollock & Associates, P.C.
105 W. Madison, Suite 2200
Chicago, IL 60602
(312) 444-1940

/s/ Marc Van Der Hout
Marc Van Der Hout (*pro hac vice*)
Van Der Hout, Brigagliano & Nightingale, LLP
180 Sutter Street, Suite 500
San Francisco, CA 94104
(415) 981-3000