UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV13-03972 JAK (PLAx)	Date	August 28, 2014
Title	Isadora Lopez-Venegas, et al. v. Jeh Johnson, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE
Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE REPRESENTATIVE PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS-WIDE PORTION OF SETTLEMENT (DKT. 90)**

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT RESOLVING CLAIMS ON BEHALF OF MARTA MENDOZA BY AND THROUGH HER NEXT FRIEND PATRICIA ARMENTA (DKT. 91)

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT RESOLVING CLAIMS ON BEHALF OF YADIRA FELIX BY AND THROUGH HER NEXT FRIEND CANDELARIA FELIX (DKT. 92)

DEFENDANT'S MOTION FOR REVIEW OF ORDER GRANTING MOTION FOR PROTECTIVE ORDER (JUDGE ABRAMS) (DKT. 70)

I. Introduction

In this putative class action, 11 named individuals (the "Individual Plaintiffs") and three non-profit organizations (the "Organizational Plaintiffs") (collectively, "Plaintiffs"), brought claims arising from a voluntary departure program (the "Program") administered by federal, immigration enforcement agencies in Southern California. FAC ¶¶ 1-6, Dkt. 28.[1] Under the Program, non-citizens who are

[1] Plaintiffs' First Amended Complaint (the "FAC") named the following senior, federal officials as Defendants: Rand Beers, Acting Secretary of the Department of Homeland Security ("DHS"); Thomas Winkowski, the Deputy Commissioner of CBP, who performs the duties of CBP Commissioner; and John Sandweg, Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). *Id*. ¶¶ 24-26. The FAC also named the following local, federal officials as Defendants: Paul Beeson, Chief Patrol Agent for CBP's San Diego Sector; Gregory Archambeault, ICE Field Office Director for San Diego; and Dave Marin, Acting ICE Field Office Director for Los Angeles. *Id*. ¶¶ 27-30. After the filing of the FAC, pursuant to Fed. R. Civ. P. 25(d), Jeh Johnson, the current secretary of the DHS, was named as a defendant in place of Rand Beers. *See* Dkt. 70 at 6 n.1.

residing in the United States unlawfully may voluntarily agree to leave the country by signing their own expulsion orders. *Id*. In their complaint, Plaintiffs alleged that, as administered in Southern California, the Program violated their rights under the Constitution as well as under the statutes and regulations that apply to the enforcement agency defendants. *Id*.

After several months of litigation, the exchange of certain discovery, and substantial arms-length negotiations, the parties reached a settlement agreement (the "Agreement"). Declaration of Sean Riordan ("Riordan Decl."), Dkt. 90-3, Exh. 1 (hereinafter "Settlement Agreement"). On August 18, 2014, Plaintiffs filed this Motion seeking an order: (i) provisionally certifying a settlement class; (ii) appointing certain plaintiffs as class representatives; (iii) appointing Plaintiffs' counsel as Class Counsel; (iv) granting preliminary approval of the class-wide terms of the Agreement; (v) approving the notice plan; (vi) staying all proceedings in the litigation other than those necessary to effectuate the terms of the Agreement; and (vii) setting a hearing for final approval of the class settlement (the "Motion"). Dkt. 90. Applications were also filed on behalf of Individual Plaintiffs Marta Mendoza and Yadira Felix for approval of the settlement on their behalf, by and through representatives acting on their behalf (the "Applications"). Dkt. 91, 92.

The Motion is unopposed. After reviewing the Motion and related materials, the Court has determined that, pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, this matter is one that is appropriate for decision without oral argument. For the reasons stated in this Order, Plaintiffs' Motion and the Applications are GRANTED.

II. Factual Background

On June 4, 2013, Plaintiffs brought this putative class action. They allege that federal, immigration enforcement agencies in Southern California were employing coercive, deceptive, and threatening tactics to pressure non-citizens to signing their own expulsion orders under the color of "voluntary departure." FAC ¶¶ 1-6, Dkt. 28. The Program, which is authorized by 8 U.S.C. § 1229c(a)(1), gives the Attorney General of the United States discretion to "permit an alien voluntarily to depart from the United States at the alien's own expense…in lieu of being subject to [removal proceedings before an immigration judge]." Plaintiffs allege that Defendants engaged in the following conduct: (i) pre-marked the term "voluntary departure" on a common form before presenting it to non-citizens; (ii) failed to disclose to such persons certain consequences of accepting voluntary departure; and (iii) failed to provide non-citizens with access to counsel while they were deciding whether to accept the proposed voluntary departure. Plaintiffs have advanced causes of action for violations of the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*.; Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq*.; and Due Process Clause of the Fifth Amendment to the U.S. Constitution.

The Individual Plaintiffs are non-citizens who had resided in Southern California before returning to Mexico through the voluntary departure program. FAC ¶¶ 42, 50, 57, 64, 71, 80, 88, 95, 101, 108, 115.

Eight of the individual named Plaintiffs (the "Representative Plaintiffs")[2] bring this action on behalf of a class, which is defined as:

> All individuals who are physically present in, or will in the future be returned to, Mexico under color of an administrative voluntary departure that occurred in the territory under the jurisdiction of the San Diego Border Patrol Sector, the ICE Field Office for San Diego, or the ICE Field Office for Los Angeles on or after January 1, 2009 and who would have had a plausible basis to seek the opportunity to reside legally in the United States under the immigration laws and programs of the Department of Homeland Security had they not been expelled under administrative voluntary departure.

FAC ¶ 164. The Individual and Representative Plaintiffs allege that agents of the San Diego Border Patrol, or officers of the San Diego and Los Angeles ICE Field Offices, pressured them to sign their own expulsion orders. They also allege that these parties made misstatements about some matters and omitted information about others, which resulted in a failure to inform Plaintiffs about the legal consequences of agreeing to a "voluntary departure." *Id.* ¶¶ 36, 40, 44, 52, 59, 67, 75, 82, 90, 97, 150-53, 164.

Certain claims are also brought by three Organizational Plaintiffs: Coalition for Humane Immigration Rights of Los Angeles ("CHIRLA"); Pomona Economic Opportunity Center ("PEOC"), and San Bernardino Community Service Center ("SBCSC"). *Id.* ¶¶ 21-23.

III. Procedural Background

On June 4, 2013, Plaintiffs filed their initial complaint. Dkt. 1. Those named as plaintiffs in the original complaint were persons acting on behalf of a putative class, a woman with cognitive disabilities seeking relief through and two organizations. On July 1, 2013, Defendants filed a motion to transfer the action to the Southern District of California. Dkt. 11. Plaintiffs opposed the motion. Dkt. 17. Prior to the hearing on the motion to transfer, on September 11, 2013, Defendants filed a motion to dismiss the original complaint. Dkt. 20.

After Defendants brought the motion to dismiss, Plaintiffs filed the FAC. Dkt. 28. The FAC named two additional class representatives. One was a person seeking relief in his individual capacity; the other was a woman with mental health issues seeking relief through her next friend. The FAC also added another organization as a plaintiff. Defendants withdrew their motion to transfer (Dkt. 33) and moved to dismiss the FAC (Dkt. 35). While the motion to dismiss was pending, certain plaintiffs moved for a preliminary injunction. Dkt. 37. On December 27, 2013, the Court granted in part and denied in part Defendants' motion to dismiss and denied the motion for a preliminary injunction. Dkt. 53.

During the course of the litigation and prior to reaching the proposed settlement agreement, the parties

[2] The Representative Plaintiffs are Isidora Lopez-Venegas, Ana Maria Dueñas, Gerardo Hernandez-Contreras, Efrain Garcia-Martinez, Alejandro Serrato, and Arnulfo Sierra.

engaged in substantial discovery. Plaintiffs served several document requests, interrogatories and deposition notices, as well as a request for admission and requests for leave to enter on to certain land. Riordan Decl. ¶ 3. In response, Defendants produced approximately 8,000 pages of documents. In addition, ten depositions were taken. The witnesses included field workers for certain of the Defendants and their supervisors as well as persons who implemented the policies of ICE and Border Patrol. *Id.* Defendants deposed eight Individual and Representative Plaintiffs and three witnesses designated by the Organizational Plaintiffs. *Id.* ¶ 4. Plaintiffs also produced more than 2000 pages of documents in response to discovery requests. *Id.* In the course of the discovery process, the parties filed motions with respect to certain disputes, including as to the appropriate terms of a protective order and whether certain documents should be produced. Dkt. 58, 75.

On April 10, 2014, the parties attended a settlement conference with Magistrate Judge Abrams. Riordan Decl. ¶ 5. The parties did not reach an agreement at that time. On April 25 and May 23, 2014, the parties participated in further settlement conferences with Judge Abrams. *Id.* ¶ 6. Outside of these conferences, counsel for the parties engaged in extensive discussions on open issues. Ultimately, with the assistance of Judge Abrams, the parties reached an agreement in principle to settle all of the pending claims. *Id.* On June 10, 2014, the parties met again with Judge Abrams to discuss and resolve certain open issues, including as to an award of attorney's fees. *Id.* Once all issues were resolved, the parties prepared and executed a settlement agreement. *Id.* ¶ 7.

IV. Terms of the Proposed Settlement

A. Settlement Class

The parties agree that the "Class" is defined as:

> All Individuals who returned to Mexico pursuant to a Qualifying Voluntary Return,[3] and who are described in both paragraphs (a) and (b) of this section:
>
> (a) Based on the facts as they existed at the time of his or her Qualifying Voluntary Return, the Individual:
>
> > (i) Last entered the United States with inspection prior to his or her Qualifying Voluntary Return and satisfied the non-discretionary criteria for submitting an

[3] As used in the Class definition, the term "Qualifying Voluntary Return" means "any Voluntary Return that occurred within the Relevant Area during the period starting June 1, 2009, and [the date the Court preliminarily approves the class-wide settlement relief], on which a potential Class Member relies when applying to be a member of the Settlement Class." Settlement Agreement § 1.21. The term "Relevant Area" means, "with regard to Border Patrol, the geographic area covered by Border Patrol's San Diego Sector, and with regard to ICE, the geographic area covered by ICE's San Diego and Los Angeles Field Offices." *Id.* § 1.22. The term "Voluntary Return" means "the process by which an Individual in the custody of ICE or Border Patrol admits being unlawfully present in the United States, and returns to his or her country of citizenship or nationality under 8 U.S.C. § 1229c(a), in lieu of formal removal proceedings. This term does not include voluntary departure granted by an immigration judge during or at the conclusion of formal removal proceedings." *Id.* § 1.27.

approvable application to adjust status under 8 U.S.C. § 1255(a), based on a bona fide immediate relative relationship defined in 8 U.S.C. § 1151(b)(2)(A)(i);

(ii) Was the beneficiary of a properly filed Form I-130 Petition for Alien Relative based on a bona fide family relationship, which was pending or approved at the time of the Qualifying Voluntary Return;

(iii) Satisfied the non-discretionary criteria to apply for cancellation of removal under 8 U.S.C. § 1229b; or

(iv) His or her Qualifying Voluntary Return occurred on or after June 15, 2012, and at that time he or she satisfied the bulleted criteria for consideration for Deferred Action for Childhood Arrivals ("DACA") listed on page one of the June 15, 2012 memorandum from former Secretary of Homeland Security Janet Napolitano; and

(b) At the time of application for class membership, the Individual:

(i) Is physically present within Mexico; and

(ii) Is inadmissible under 8 U.S.C. § 1182(a)(9)(B), due to his or her Qualifying Voluntary Return, except that this requirement does not apply to an Individual seeking recognition as a Class Member under § 1.26(a)(i) above.

Settlement Agreement §1.26.[4]

B. Procedures to Petition to Return to the United States

Beginning four months after the Court grants final approval, Defendants will accept applications from class members who wish to return to the United States. Defendants will permit the physical return of a class member upon a showing that he or she meets the criteria for class membership, subject to certain exceptions. *Id.* §§ 2.2, 2.3. If an application is granted, a class member will be permitted to return to the United States through the San Ysidro Port of Entry. If a Class member is allowed to return to the United States, Defendants agree to place the individual in the same position with respect to the applicable immigration laws and regulations that he or she occupied immediately prior to the Qualifying Voluntary

[4] This class definition varies slightly from the one alleged in the FAC. However, Plaintiffs represent that the categories of individuals described in the proposed Settlement Class comprise most of the persons described in the FAC as having "a plausible basis to seek the opportunity to reside legally in the United States." FAC ¶ 164. The variation in the two definitions of the class does not affect the substance of the fairness inquiry. *See McBean v. New York,* 233 F.R.D. 377, 384 (S.D.N.Y. 2006) ("It was perfectly reasonable . . . for class counsel to define the class in a way that, in their opinion, would lead to the best recovery *for the class.* Fairness does not require class counsel to act on behalf of individuals not in the class, even if at one time those individuals were included in a pretrial class definition.") (Emphasis in original).

Return. *Id.* § 2.2(e). Thus, the class member may simply be admitted or may be placed in parole or removal proceedings. Settlement Agreement §§ 2.2(a)-(c), 2.3(a).

Defendants will accept applications for a period of 180 days. *Id.* § 2.3(b). Applications may be submitted by any of the following: (i) Plaintiffs' counsel; (ii) persons employed by or affiliated with the Organizational Plaintiffs; or (iii) up to 12 other non-profit organizations, law school clinics, law firms or immigration practitioners. *Id.* §§ 1.2; 2.3(c). The Settlement Agreement also provides for a dispute resolution procedure in the event there is a disagreement with respect to whether an individual is entitled to the benefits of Class membership. *Id.* § 2.4.

C. Release of Claims

In exchange for the relief described above, Plaintiffs have agreed to release all claims for injunctive and declaratory relief against all Defendants arising from, or related to, the claims in the FAC that have occurred on or before the entry of an order of preliminary approval. Settlement Agreement §§ 6.1-6.2. The Individual, Representative, and Organizational Plaintiffs also have waived any claims for monetary damages. *Id.* However, the Settlement Agreement does not include a release by Class members of any individual claims for monetary relief. *Id.* § 6.2.[5]

D. Notice and Claim Procedures

The parties agreed to the selection of Dahl Administration, LLC ("Dahl") to provide notice to the members of the proposed Class. Settlement Agreement §§ 1.25; 3.2(e); 3.3(a). Defendants are responsible for the costs and fees of Dahl that arise from its work in providing such notice up to an amount that is the lesser of: (i) 50% of the total costs and fees; or (ii) $150,000. *Id.* § 3.3(b). Class Counsel is responsible for Dahl's costs and fees that exceed that amount. *Id.* If the total costs and fees of Dahl exceed $300,000, plaintiffs may seek to renegotiate the apportionment of such costs with Defendants. *Id.*

E. Attorneys' Fees and Costs, and Administration.

The proposed settlement provides that Class Counsel may petition the Court for an award of reasonable attorney's fees and costs, not to exceed $700,000. Settlement Agreement § 7.1. The parties agree that the relief afforded to the Class will not be affected should the Court award less than

[5] If a Class member is not permitted to return to the United States under the Agreement, he or she is not bound by the release and may raise claims through separate litigation. The parties have agreed that there will be a tolling of any limitations periods with respect to such claims between the filing of the instant action and the conclusion of the dispute resolution process as to the applications by individual Class members to return to the United States. *Id.* § 2.4.

the amount requested. *Id.* § 7.2.[6]

V. Analysis

A. Motion for Preliminary Approval

1. The Standard for Approval

Fed. R. Civ. P. 23(e) requires that a court engage in a two-step process when considering whether to approve the settlement of a class action. First, in the preliminary approval process, a court must make a preliminary determination whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *See Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). At this stage, "the settlement need only be *potentially* fair." *Id.* (emphasis added). In the second step of the process, which occurs after preliminary approval, notification to class members, and the compilation of information as to any objections by class members, a court determines whether final approval of the settlement should be granted by applying several applicable criteria.

A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. In the Ninth Circuit, the following eight, non-exclusive factors are among those that may be considered during both the preliminary and final approval processes:

1) the strength of the plaintiff's case;
2) the risk, expense, complexity, and likely duration of further litigation;
3) the risk of maintaining class action status throughout the trial;
4) the amount offered in settlement;
5) the extent of discovery completed and the stage of the proceedings;
6) the experience and view of counsel;
7) the presence of a governmental participant; and
8) the reaction of the class members to the proposed settlement.

See Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998). Each factor does not necessarily apply to every class action settlement, and other factors may be considered. For example, courts often consider whether the settlement is the product of arms-length negotiations. *See Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). As noted, in determining whether preliminary approval is warranted, a court is to decide whether the proposed settlement has the potential to be deemed fair, reasonable and adequate in the final approval process.

[6] Defendants also agree to certain prospective relief in the Settlement Agreement. Thus, Defendants agree to: provide certain additional information to non-class members prior to their selection of voluntary return; modify Form I-826 to include certain information; implement an advisory hotline with information relevant to individuals who have or will be offered the opportunity to request voluntary return; post notices of rights; and modify other voluntary return procedures. *See* Settlement Agreement §§ 4-4.7. Because these terms do not apply to Class members, they are not relevant to the application of the standards that apply to the Motion.

2. Application

a) Factors Relevant to the Proposed Settlement

The Court's initial evaluation of the relevant factors, in light of the evidence presented by Plaintiff in connection with the Motion, shows that the settlement has the potential to be deemed fair, reasonable and adequate.

First, the settlement occurred following extensive negotiations that were informed by meaningful discovery. Further, these arm's length negotiations were conducted by capable counsel. The resulting terms are a product of the risk, expense, and likely duration of further litigation. Comprehensive discovery was conducted, including depositions, requests for production of documents and interrogatories. Riordan Decl. ¶¶ 3-4. The parties participated in four, formal mediation sessions with Judge Abrams and engaged in ongoing negotiations throughout the pendency of this action. *Id.* ¶¶ 5-7. And, the parties were aware of the complex legal issues presented by the case after fully briefing Defendants' motion to dismiss and Plaintiffs' motion for a preliminary injunction.

This evidence supports a preliminary finding that the settlement agreement was the product of diligent, arms-length negotiations that fairly addressed the strength of Plaintiffs' case, the risks and expense of continued litigation, as well as the risks associated with obtaining class certification and maintaining that status throughout any trial proceedings. Such negotiations support a finding that the proposed settlement is fair and reasonable. *See See Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1027 (9th Cir. 1998) (affirming approval of settlement after finding "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of plaintiffs' claims"); *Harris v. Vector Marketing Corp.,* 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) ("With the Court's prior rulings as guidance, the parties were in a position to assess the strengths and weaknesses of their arguments and evidence, and make an informed decision about the risks associated with proceeding . . . to trial."); *Cicero v. DirecTV, Inc*., 2010 WL 2991486, at *3 (C.D. Cal. July 27, 2010); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1171 (S.D. Cal. 2007).

Second, the Agreement provides reasonable benefits to the Class in light of the uncertainty that would have attended further litigation, including a possible trial. The Agreement provides a mechanism for Class members to return to the United States and to be restored to the legal position they held prior to their respective voluntary departures. Thus, Class members are afforded the relief sought by the Representative Plaintiffs on behalf of the Class when this action was filed. *See* FAC, Prayer for Relief, ¶ 4. This recovery is reasonable in light of the risks and expense of further litigation, *i.e*., additional fact and expert discovery, class certification, summary judgment, trial, and likely appeal. *See Perez v. Asurion Corp.,* 14 501 F. Supp. 2d 1360, 1381 (S.D. Fla. 2007) (approving settlement, in part, because absent settlement the parties would "incur significant trial expenses" litigating a complex case and "the case would not conclude at trial, but would continue with appellate proceedings").

Third, counsel for both parties have extensive experience with civil rights actions relating to immigration procedures. Riordan Decl. ¶ 11. Thus, their support of the proposed settlement provides further support for preliminary approval. *See In re Lorazepam & Clorazepate Anittrust Litig.,* 2003 WL 22037741, at *6

(D.D.C. June 16, 2003) (stating the opinion of experienced counsel "should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement"); *Lyons v. Marrud, Inc.,* No. 66 Civ. 415, 1972 WL 327, at *2 (S.D.N.Y. June 6, 1972) ("The parties' decision regarding the respective merits of their positions has an important bearing on this case.").[7]

b) Provisional Certification of the Settlement Class

On a motion for preliminary approval of a class action settlement, a court must make a threshold determination that the proposed classes meet Rule 23 requirements. Thus, a court must determine whether: (i) the proposed settlement class is so numerous that joinder would be impracticable; (ii) there are questions of law or fact common to the class; (iii) the named plaintiffs' claims are typical of those of the proposed class; and (iv) named plaintiffs and their counsel will adequately and fairly represent the interests of the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir. 1998).

A provisional certification of the settlement classes is appropriate in this action for several reasons. *First*, the settlement Class is sufficiently numerous: Defendants produced evidence that over 200,000 persons were "voluntarily returned" to Mexico from the relevant area in Southern California from 2009 through 2013. Riordan Decl., ¶ 3. Not all of these individuals are members of the Class; however, "[w]here the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied." *Cervantez v. Celestica Corp.,* 253 F.R.D. 562, 569 (C.D. Cal. 2008) (quotations omitted). It is also relevant that the Class is made up of persons who are presently in Mexico, many of whom are economically disadvantaged. *See Lynch v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal. 1984) *aff'd*, 747 F.2d 528 (9th Cir. 1984) *opinion amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985) (finding numerosity was supported by the fact that "joinder of all plaintiffs is not feasible because of geographic factors, and because members of the class, who are by definition poor and disabled, do not have the economic means to pursue remedies on an individual basis").

Second, the Class members seek redress based on common claims that are susceptible to classwide resolution. Thus, the FAC alleges that Defendants' policies and procedures for implementing the Program in Southern California were unlawful. Specifically, the FAC challenges Defendants' use of Form I-826 in administering the Program, the alleged practice of failing to advise Class members of the consequences of agreeing to voluntary departure, and the alleged failure to provide access to counsel. These lead to common questions, including: (i) whether there has been an unlawful pattern and practice of denying Class members information sufficient to make an informed decision about whether to agree to a "voluntary return"; (ii) whether there has been an unlawful pattern and practice of obtaining the agreement of Class members to "voluntary return" by coercion or threats; and (iii) whether defendants should be ordered to return Class members to the United States in a way that restores the position each held prior to their respective voluntary returns. For these reasons, commonality has been

[7] The Court takes no position at this time with respect to whether attorney's fees should be awarded, and, if so, their amount. An in-depth analysis of these issues will be conducted as part of any final approval process. At that time, Plaintiffs' counsel shall submit summaries that show, by attorney and legal assistant, the hours worked, the tasks undertaken, and the hourly rates applied. Based on that data, the Court will conduct the appropriate lodestar and related analyses to determine whether any requests for fees and costs are reasonable.

shown for purposes of this Motion. *See Armstrong v. Davis,* 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. Cal.,* 543 U.S. 499, 504–05 (2005) ("We have previously held, in a civil-rights suit, that commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.").

Third, the claims of the Representative Plaintiffs arise out of the same factual and legal circumstances as those of the proposed Class members. The Representative Plaintiffs, as well as the members of the proposed settlement Class, were subject to the same conduct by Defendants, which is challenged in the FAC. *See*, *e.g.,* Dkt. No. 62 at ¶¶ 44; 122 (defendants' answer admitting Representative Plaintiffs were offered voluntary return through the I-826 form); FAC ¶¶ 42-163. For this reason, the typicality requirement is satisfied for purposes of this Motion.

Fourth, Representative Plaintiffs and their counsel will adequately and fairly represent the Class. There is no evidence that any conflicts have arisen between Representative Plaintiffs and other Class members. And, Plaintiffs' counsel has extensive experience in civil rights and immigration actions that are similar in size, scope, and complexity to this one. Riordan Decl. ¶ 11.

Fifth, the requirements of Rule 23(b)(2) are satisfied for purposes of provisional certification. That rule provides that the party or parties opposing certification must have acted or failed to act on grounds generally applicable to the proposed class, "so that final injunctive relief or corresponding declaratory relief is appropriate. . . ." Fed. R. Civ. P. 23(b)(2). "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) class actions. *Amchem,* 521 U.S. at 614. Although this is not a discrimination case, Plaintiffs allege that Defendants adopted and implemented policies and procedures that resulted in unlawful voluntary departures by Class members. Plaintiffs have shown that injunctive relief would be appropriate if they were successful on these class claims. *See Walters v. Reno,* 145 F.3d 1032, 1048, 1051 (9th Cir. 1998) (affirming classwide injunction that required the government to allow certain class members to reenter the United States); *Salgado-Diaz v. Gonzales,* 395 F.3d 1158, 1164 (9th Cir. 2005) (finding, in a case challenging an allegedly unlawful voluntary return, that "assuming petitioner had demonstrated that his 'deportation' [voluntary departure] was not voluntary or lawfully executed, Salgado-Diaz would have been returned to his original, prearrest status, under conditions favorable to his qualifying for relief from deportation").

Finally, the proposed Notice and notice plan satisfies the requirements of Rule 23(e). The proposed Notice explains the nature of the action and the terms of the Settlement and how each Class member may object to or participate in the Settlement. *See* Settlement Agreement, Exh. B. Further, the proposed plan ensures reasonable notice to prospective Class members. Thus, Dahl will publish the notice in various forms of print, radio, electronic and other physical media, including billboards. Settlement Agreement § 3.3(a).

B. Individual Applications for Approval of the Settlement

Two Individual Plaintiffs in this action, Patricia Armenta ("Armenta") and Candelaria Felix ("C. Felix"), brought claims on behalf of Marta Mendoza ("Mendoza") and Yadira Felix ("Y. Felix"), respectively. Mendoza and Y. Felix are individuals with certain mental health issues. Armenta and C. Felix, as "next friends" of Mendoza and Y. Felix, have moved for the approval the Settlement Agreement ("Agreement") as to the resolution of the claims of these individuals. Dkt. 91, 92.

1. Legal Standard

Local Rule 83-5.2 provides that, "insofar as practicable, hearings on petitions to settle . . . a claim in an action involving a minor or incompetent person shall conform to Cal. Code Civ. Proc. § 372 and California Rule of Court 3.1384." Pursuant to Cal. Code Civ. Proc. § 372, the "guardian or conservator of the estate or guardian ad litem so appearing for any . . . incompetent person, or person for whom a conservator has been appointed" has the power, "with the approval of the court" to compromise the claims of such person. Cal. Civ. Proc. Code § 372 (a). Pursuant to Cal. Rule of Court 3.1384, any petition for court approval of a compromise under Cal. Code Civ. Proc. 372 must comply with rules 7.950, 7.951, and 7.952. In determining whether to approve such a compromise, a court is to evaluate the reasonableness of the settlement and determine whether the compromise is in the best interests of the person who lacks legal capacity. *See Anderson v. Latimer*, 166 Cal. App. 3d 667, 676 (1985); *Pearson v. Superior Court*, 202 Cal. App. 4th 1333, 1338 (2012); *Espericueta v. Shewry*, 164 Cal. App. 4th 615, 627 (2008).

2. Application

Both Applications satisfy the terms of the California Rules of Court. Each discloses that Plaintiffs' counsel: (i) did not become involved with this action, directly or indirectly, at the instance of any party against whom the claim is asserted or of any party's insurance carrier; (ii) is representing the other plaintiffs in this matter; (iii) has performed services in this case at no cost to the Plaintiffs, including Armenta and Felix; and (iv) will seek to recover $700,000 in costs and attorney's fees from Defendants pursuant to the Settlement Agreement. The representation agreements between Plaintiffs' counsel and Armenta and Felix have also been attached as exhibits to the Applications.

The Applications show that the Agreement is in the best interest of Mendoza and Y. Felix. The FAC alleges that Mendoza and Y. Felix left the United States through voluntary departure in July 2013 and August 13, 2012, respectively. FAC ¶¶ 104, 111-13. Mendoza has suffered from mental health issues since at least 1996. Declaration of Patricia Armenta ("Armenta Decl."), Dkt. 91-2, ¶ 7. In the summer of 2013, Mendoza was exhibiting behavior suggesting that she was "mentally unbalanced." *Id.* ¶ 8. At that time, she was arrested. Later she returned to Mexico through voluntary departure. *Id.* ¶ 9. Armenta declares that Mendoza's mental health has suffered since her removal from the United States. *Id.* ¶ 10. In August 2013, she was diagnosed with depression and bipolar disorder. *Id.* Y. Felix suffers from

severe cognitive disabilities and is unable to live independently. Declaration of Candelaria Felix ("C. Felix Decl."), Dkt. 92-2, ¶¶ 5-7. After Y. Felix was returned to Mexico through voluntary departure, C. Felix moved to Mexico to care for her. *Id.* ¶ 9. They now live in Mexico. *Id.* ¶ 6.

These plaintiffs sought declaratory and injunctive relief. They asked to be returned "to the United States in a manner that restores them to the legal position that they occupied prior to their respective voluntary departures." FAC at 59. They did not seek monetary relief. The Settlement Agreement bars Mendoza and Y. Felix from bringing any future claims for such relief. Settlement Agreement § 6.1. However, it allows them to return to the United States and to be restored to the same positions they held with respect to their presence here before they returned to Mexico. Settlement Agreement § 2.2. Thus, the Settlement affords these individuals all the relief they sought in the FAC. Absent this Agreement, these individuals would be required to remain in Mexico where each would be separated from his or her family or legal guardian. Armenta and C. Felix state that they believe the Settlement to be in the best interests of Mendoza and Y. Felix, respectively. Armenta Decl. ¶ 13; C. Felix Decl. ¶ 13.

The evidence submitted with the Applications shows that Mendoza and Y. Felix require significant support and supervision and would benefit from being returned to the United States, with an opportunity to seek to reside here legally. For all of these reasons, the Court finds that the Agreements are in the best interests of Mendoza and Y. Felix and GRANTS the Applications.

VI. Conclusion

For these reasons, the Court GRANTS Plaintiff's Motion and the Applications. A hearing on final approval of the settlement is set for February 9, 2015 at 8:30 a.m. Plaintiffs shall file a motion for final approval, including Plaintiffs' counsel's application for attorney's fees and costs, on or before January 5, 2015. Any opposition shall be filed on or before January 19, 2015, and any reply shall be filed on or before January 26, 2015.

In light of Plaintiff's Motion and Applications, Defendant's Motion for Review of Order Granting Motion for Protective Order (Judge Abrams) is MOOT.

IT IS SO ORDERED.

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Initials of Preparer ak