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Attorneys for Plaintiffs.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MADHAVI R. CHINTAKUNTLA,
AMJAD KHAN,
RAJASEKHAR VONNA,
SHASHAANKA AGRAWAL,
SASIBHUSHNAN KUMAR YARLAGADDA,
WANCHUN WANG

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE and DORIS MEISSNER
COMMISSIONER OF THE IMMIGRATION AND
NATURALIZATION SERVICE, IN HER OFFICIAL
CAPACITY,

Defendants.

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CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C 99-5211 MMC

JOINT
STIPULATION AND
[PROPOSED] ORDER

Date: April 4, 2000
Time: 10:00 a.m.

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PARTIES OF RECORD

¹Mr. Surmaitis and Mr. Leiden appear *pro hac vice*.

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BERRY APPLEMAN & LEIDEN

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2 Plaintiffs, by and through their attorneys of record, and Defendants, by and through their
3 attorneys of record, are attempting to resolve the substantive legal issues and the logistical
4 arrangements for a final resolution of this case and submit this stipulation to the Court. The Court
5 requested that the parties present a proposed Order defining and certifying the class, and
6 providing for permanent injunctive relief, so that the Court could enter an order on April 4,
7 2000.

8 Plaintiffs sent copies of a draft Proposed Order Certifying Class and Granting Permanent
9 Injunction to Defendants for review on March 29, 2000. On March 30, 2000, Defendants
10 requested that Plaintiffs consent to a thirty (30) day period of additional time before the final
11 Court hearing on this issue in order to provide Defendants time to review and respond to
12 Plaintiff's Proposed Order. Moreover, Defendants requested this time to allow for discussion
13 within Defendant INS and to work with Plaintiffs to develop and prepare a systematic plan to
14 implement the order that the Court indicated it intended to issue. Plaintiffs consent to this thirty
15 (30) day extension of time based upon the terms set forth below.

16 The parties recognize that there is an urgency to resolving the cases of potential class
17 members who are in danger of losing their ability to continue working and residing in the United
18 States due to the expiration of their H-1B visas or who may be prevented from filing adjustment
19 of status applications due to the regression of "visa number" priority dates. A Plan will be
20 presented to the Court that will include, inter alia, readjudication of denied EB2 I-140 petitions
21 of class members, so as to ensure that class members interests are fully protected consistent with
22 the Order that the Court indicated that it was intending to issue. This Plan will be presented to
23 the Court no later than 3 days prior to the date of the next scheduled hearing in this
24 matter. Subject to approval of the Court the parties stipulate as follows:

25 1. Defendants will readjudicate EB-2 I-140's of putative class members in the categories
26 specified below, where Plaintiffs assert in this litigation that the denial was improper because the
27 I-140 was denied due to the inclusion on the ETA 750 accompanying the I-140 of a Bachelor's
28 degree (with at least five years experience) as part of the minimum requirement for the job

1 offered. Defendants agree to readjudicate such I-140s in full accordance with the March 20,
2 2000 memorandum that was issued by INS on the subject of: Educational and Experience
3 Requirements for Employment-Based Second Preference (EB-2) Immigrants, including
4 expedited requests for supplemental information, if needed, so that if supplemental information
5 or documentation is needed in order to approve the application, that information or
6 documentation can be provided, and the application readjudicated and, if approved, adjustment
7 applications of putative class members can be filed, prior to the expiration of any non-immigrant
8 status or the regression of priority dates that would prevent such individuals from filing
9 adjustment of status applications.

10 2. For those EB-2 I-140 cases that can be identified to Defendants on or before April 4,
11 2000, whose H-1B visas will expire on or before June 1, 2000, Defendants will re-adjudicate
12 those cases no later than ten (10) days prior to the expiration of the nonimmigrant visa status of
13 each class member. As of the date of this stipulation Plaintiffs' counsel are aware of four
14 individuals who meet criteria described in this paragraph, and names and INS file numbers of
15 these individuals will be provided to Defendants no later than April 4, 2000.

16 3. For additional EB-2 I-140 cases that can be identified to Defendants on or before April 17,
17 2000, whose H-1B visas will expire on or before June 1, 2000, Defendants will readjudicate
18 those within the 10 day period specified above or, by April 24, 2000, whichever date is later. For
19 petitions of potential class members who become affected by further retrogression of priority
20 dates in the employment based second preference categories in May 2000 (as published in the
21 State Department Visa Bulletin that will be released in mid-April, 2000), Defendants will re-
22 adjudicate those cases on or before April 24, 2000.

23 4. As additional cases of proposed class members meeting the criteria set forth in paragraphs
24 1-3 above become known to Plaintiffs' counsel, they will furnish those cases to Defendants
25 through counsel. Defendants will make their best efforts to re-adjudicate those cases in sufficient
26 time to allow adjustment of status applications to be filed and employment authorization to be
27 granted prior to expiration of their current employment authorization, and prior to any regression
28 of priority dates which would prevent the filing of adjustment of status applications. If such

1 approvals in those cases are not received prior to the expiration of potential class members' H-1B
2 status, and in sufficient time for adjustment of status applications to be filed and employment
3 authorization requests approved as described in paragraph 6 herein, Plaintiffs reserve the option
4 of bringing those cases to the attention of the Court, but agree to first meet and confer with
5 Defendants before approaching the Court.

6 5. In addition, in those cases where the re-adjudication results in the approval of the
7 EB-2 I-140 petition, Defendants will send via facsimile the approval notice on the date of
8 approval to the law offices of Berry Appleman & Leiden, LLP, directed to the attention of Ron
9 Wada, at (503) 213-8872, as well as to the attorney of record or the petitioner if there is no
10 attorney of record, so that adjustment of status applications (I-485) may be immediately filed.

11 6. Where re-adjudication of the I-140 results in an approval, those individuals may submit
12 and INS will accept skeletal I-485 applications which include only the I-485 form, the appropriate
13 filing fee, a photocopy of the approval notice or decision and G-28; however, additional
14 documentation including medical exams, photographs, and other documentation will not be
15 required for the immediate acceptance of the I-485 applications; and in addition, individuals
16 whose H-1 B status will expire on or before June 1, 2000 will be permitted to expeditiously obtain
17 employment authorization at a designated local INS office, where the INS Service Center with
18 which the adjustment of status application is filed is unable to issue the EAD prior to the
19 expiration of the nonimmigrant status of the class member. All required supporting documents
20 must be filed within 60 days after the submission of a skeletal adjustment application.

21 7. This proposed joint stipulation is entered into for purposes of arriving at a final resolution
22 in this case and is not intended as an admission or waiver of any of the issues presently in
23 litigation. Defendant remains opposed to any injunction or class certification entered by the Court
24 on the grounds set forth in Defendant's prior filings with the Court. Plaintiffs, by agreeing to
25 readjudication pursuant to the terms of Defendants' March 20, 2000 Memorandum, do not waive
26 their objections to and arguments regarding that memorandum that they have made in filings and
27 argument before the Court.

28 8. The parties agree to a hearing date on May 4, 2000 at 10:00 a.m. or another date or time the

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Court deems appropriate for a final hearing on the Order the Court indicated it intended to issue regarding class certification and a permanent injunction. Nothing in this stipulation is intended to prevent the parties from approaching this Court prior to or after such dates should the need arise. Specifically, so as to be able to have a date available to them should resort to the Court be necessary prior to May 1, 2000, the parties agree to a tentative hearing before the Court on April 26, 2000 at 10:00 a.m. or at another time or date the Court deems appropriate. The parties agree to inform the Court on or before April 25, 2000 if that hearing is unnecessary.

9. Defendants agree that the resolution of the individual I-140s of all of the named Plaintiffs will not result in this action becoming moot.

IT IS SO STIPULATED.

Dated: April 3, 2000

Respectfully submitted,

Nancy Friedman
Nancy Friedman
Office of Immigration Litigation

Robert Yeagin
Robert Yeagin
Special Assistant United States Attorney
Attorneys for Defendants

Marc Van Der Hout
Marc Van Der Hout
George Surmaitis
Trina A. Realmuto
Van Der Hout & Brigagliano

Jeff Appleman
Jeff Appleman
Warren Leiden
Ronald Y. Yada
Berry, Appleman & Leiden LLP
Attorneys for Plaintiffs

Pursuant to this stipulation it is SO ORDERED.

Date: APR X 4 2000

MAXINE M. CHESNEY

Maxine M. Chesney
United States District Judge