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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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11 ABDIQAFAR WAGAFE, et al.,

12 Plaintiffs,

13 v.

14 DONALD J. TRUMP, President of the
United States, et al.,

15 Defendants.

CASE NO. 2:17-cv-00094-LK

ORDER REGARDING
PRELIMINARY APPROVAL
HEARING

16 The parties should be prepared to address the following questions and concerns regarding
17 their Joint Motion To Direct Notice Of Settlement Agreement, Dkt. No. 704, at the hearing on
18 February 20, 2026. Alternatively, they may file an amended motion for preliminary approval by
19 no later than February 13, 2026 that addresses these questions and concerns.

- 20 1. Rule 23(e) Factors. The motion—which is ostensibly one for preliminary approval of
21 a class action settlement—does not address the Court’s considerations listed in Federal
22 Rule of Civil Procedure 23(e). Fed. R. Civ. P. 23(e)(2) (courts must consider
23 (1) whether the class representatives and class counsel have adequately represented the
24 class; (2) whether the proposal was negotiated at arm’s length; (3) whether the relief
provided for the class is adequate, taking into account (i) the costs, risks, and delay of
trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to
the class, including the method of processing class member claims; and (iii) the terms

1 of any proposed award of attorneys’ fees, including timing of payment; and (4) whether
2 the proposal treats class members equitably relative to each other).

- 3 2. Claims Released by the Adjustment Class. Paragraph 25 states that “[t]he *Named*
4 *Plaintiffs and Class Members* shall be deemed to have fully, finally, and forever
5 released, relinquished, and discharged their *Fifth and Eighth Claims* for Relief arising
6 or accruing against Defendants based on their actual or alleged use of CARRP on or
7 before the Termination Date.” Dkt. No. 704-1 at 9 (emphasis added); *see also id.* at 4
8 (“Class Members’ refers to all members of the Adjustment Class and Naturalization
9 Class”). Under Paragraph 22, “the *claims of the Adjustment Class* are dismissed with
10 prejudice[.]” *Id.* at 8 (emphasis added). The Agreement appears to contemplate that the
11 Adjustment Class release all its claims, but this potentially conflicting language does
12 not provide adequate notice to the Adjustment Class that all claims—rather than just
13 their fifth and eighth claims—will be released.
- 14 3. Adequate Notice to the Class. The parties’ agreement states that within 14 days of the
15 Court’s preliminary approval of the settlement, Plaintiffs’ counsel will “post and
16 distribute [an] agreed upon ‘Public Notice to Possible Class Members of Settlement’
17 for a period of 30 days[.]” Dkt. No. 704 at 2; *see also* Dkt. No. 704-1 at 7. The proposed
18 notice lists the case number, briefly describes the lawsuit, and states, “if your
19 naturalization or adjustment of status application has been pending for six months or
20 more, you may be a member of the *Wagafe* class.” Dkt. No. 704-1 at 15. Potential class
21 members are directed to convey any comments “about the fairness, reasonableness, or
22 adequacy of the attached, proposed settlement agreement” to class counsel who “will
23 represent the interests of the class in relation to the proposed settlement agreement at a
24 fairness hearing to be scheduled upon conclusion of this public notice period.” *Id.*
Finally, the notice states that if the Court approves the settlement agreement, all class
members will be bound to its terms, “thus foreclosing all future claims covered under
the agreement by class members.” *Id.* at 15–16.

16 Although Rule 23 “does not . . . oblige the District Court to afford [Rule 23(b)(2) class
17 members] notice of the action,” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362
18 (2011), due process requires notice to a Rule 23(b)(2) class that is “reasonably
19 calculated, under all of the circumstances, to apprise interested parties of the pendency
20 of the action and afford them an opportunity to present their objections,” *Ashok Babu*
21 *v. Wilkins*, No. 22-15275, 2023 WL 6532647, at *1 (9th Cir. Oct. 6, 2023) (quoting
22 *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980)); *see also In*
23 *re Google Inc. Cookie Placement Consumer Priv. Litig.*, 934 F.3d 316, 323 (3d Cir.
24 2019) (“[R]egardless what these rules say, the procedures for class action settlement—
including the notice procedures—must also comply with due process requirements.”).

21 Here, the parties do not explain where or how Plaintiffs’ counsel will post and distribute
22 notice, why this notice plan is reasonably calculated to notify interested parties, or why
23 30 days is a sufficient amount of time to effectively notify interested parties.
24 Furthermore, neither the agreement nor the notice describes the claims that are being
released under the agreement. The notice should provide a link to the complaint and
succinctly describe the gist of the settlement: in exchange for Defendants foregoing
any appeal and rescinding CARRP, the Adjustment Class releases all remaining claims

1 (claim 5 that Defendants violated the Fifth Amendment’s Due Process Clause when
2 they engaged in unauthorized and indefinite suspension of class members’ applications
3 under CARRP; claim 6 that Defendants violated the Fifth Amendment’s Due Process
4 Clause by indefinitely suspending adjudication of class members’ applications on the
5 basis of their country of origin under CARRP; claim 7 that CARRP creates additional,
6 non-statutory adjudicatory criteria that is not permitted under the Immigration and
7 Nationality Act and its implementing regulations; claim 8 that CARRP is arbitrary and
8 capricious under the Administrative Procedure Act; and claim 9 that CARRP violates
9 the Administrative Procedure Act because it was implemented without notice and
10 comment, Dkt. No. 47 at 47–50), and the Naturalization Class releases claim 5 (that
11 Defendants violated the Fifth Amendment’s Due Process Clause when they engaged in
12 unauthorized and indefinite suspension of class members’ applications under CARRP)
13 and claim 8 (that CARRP is arbitrary and capricious under the Administrative
14 Procedure Act).

4. Objections and Fairness Hearing. The notice does not inform class members of when
or how they might object to the settlement, or of when or where the fairness hearing
will take place. Instead, it informs potential class members that they can submit
“comments about the fairness, reasonableness, or adequacy” of the settlement to class
counsel. Dkt. No. 704-1 at 15. While the Court understands that neither party can
confirm whether a particular individual has been subjected to CARRP, the parties do
not explain why potential class members should not be permitted to object and/or attend
the fairness hearing. *See Ashok Babu*, 2023 WL 6532647, at *1.
5. Simultaneous Dismissal and Remand. The parties do not explain why it would be
procedurally appropriate to dismiss Plaintiffs’ eighth claim for relief with prejudice and
simultaneously remand the case to USCIS pursuant to the summary judgment order on
the eighth claim for relief, as opposed to—for example—dismissing the eighth claim
with prejudice after the Court receives notice that CARRP has been rescinded pursuant
to Paragraph 22(d) of the agreement. Dkt. No. 704-1 at 8.

17 DATED this 12th day of January, 2026.

19 

20 Lauren King
21 United States District Judge