

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

4 GWENDOLYN NAAG HANFORD,) Case No. SA-08-CA-0795 XR
5)
6 Plaintiff-petitioner,)
7)
8 vs.)
9)
10 MICHAEL CHERTOFF, Secretary, U.S.)
11 Department of Homeland Security;)
12 JONATHAN SCHARFEN, Acting)
13 Director, U.S. Citizenship and)
14 Immigration Services,)
15)
16 Defendants-respondents.)
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15 SURREPLY TO RESPONDENTS' REPLY

16 Respondents' Reply in Support of Their Motion to Dismiss [Docket #
17 19] contains an argument that Petitioner¹ was not a putative member of the
18 *Hootkins v. Chertoff* Class. See *Hootkins v. Chertoff*, CV07-05696 (CAS)
19 (C.D. Cal. Aug. 30, 2007). Petitioner submits this limited Surreply to
20 address this discrete issue newly raised in Respondents' Reply.
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24 Petitioner's case is identical to *Hootkins* Class Plaintiff Ngoc Dieu
25 Nguyen ("Plaintiff Nguyen"). Petitioner relied upon named Plaintiff
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27 _____
28 ¹ Plaintiff-petitioner will be referred to here as "Petitioner" instead of "Plaintiff" for consistency because Defendants-respondents' Reply refers to Respondent.

1 Nguyen to press her claims. As the Supreme Court has held,

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3 Class members who do not file suit while the class action is pending
4 cannot be accused of sleeping on their rights; Rule 23 both permits
5 and encourages class members to rely on the named plaintiffs to press
6 their claims. And a class complaint ‘notifies the defendants not only
7 of the substantive claims being brought against them, but also the
8 number and generic identities of the potential plaintiffs who may
9 participate in the judgment.’ *American pipe*, 414 U.S., at 555, 94
10 S.Ct., at 767”

11 *Crown, Cork & Seal Co, Inc. v. Parker*, 462 U.S. 345, 352-53 (1983)

12 Because Plaintiff Nguyen was a named plaintiff in *Hootkins*, Petitioner
13 reasonably relied upon Plaintiff Nguyen’s participation in the class action
14 lawsuit to represent her interests in obtaining class certification for her
15 situation. Plaintiff Nguyen was an original plaintiff named in the Complaint
16 filed August 30, 2007, and also the First Amended Complaint filed March
17 20, 2008. Additionally, Plaintiff Nguyen filed a Declaration in Support of
18 the Motion to Certify Class in *Hootkins* on April 28, 2008, seeking to
19 represent members of the class. See Exhibit A, Civil Docket Sheet, Docket
20 # 69, and Exhibit B, Declaration of Ngoc Dieu Nguyen in Support of Motion
21 for Class Certification.
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24 Respondents’ arguments that Petitioner should not be deemed to have
25 been a putative member of the *Hootkins* action merely because the form
26 name is different for a K-1 entrant who marries a U.S. citizen must fail as a
27 terminological attempt to bar Petitioner’s claim. Nothing in the Supreme
28

1 Court's decision in *Crown, Cork & Seal, supra*, may be construed to limit a
2 putative class member so narrowly. This is particularly the case where, as
3 here, the factual basis of Petitioner's case matches exactly one of the named
4 class plaintiffs. Petitioner cannot be accused of sleeping on her rights
5 because she relied on the named plaintiff Nguyen to press her claims.
6
7

8 DATED this 26th day of January, 2009.

9 PARRILLI RENISON LLC

10
11 By /s/ Brent W. Renison

12 Brent W. Renison (Bar No. 96475)
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Gary L. Anderson
Email: Gary.Anderson@usdoj.gov
Assistant United States Attorney
601 NW Loop 410, Suite 600
San Antonio, TX 78216

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on the 26th day of January 2009, at Lake Oswego, Oregon.

/s/Brent W. Renison

Brent W. Renison