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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 CAROLYN ROBB HOOTKINS, et al.) Case No. CV07-05696 (CAS)
12 Plaintiffs,)
13) Date: January 28, 2008
14 v.) Time: 10:00 a.m.
15) Courtroom: 5
MICHAEL CHERTOFF, Secretary, U.S.) Honorable Christina A. Snyder
16 Department of Homeland Security,)
et al.) DEFENDANTS' REPLY IN SUPPORT
17 Defendants.) OF MOTION TO DISMISS, AND
18) OPPOSITION TO PLAINTIFFS'
19) CROSS MOTION FOR SUMMARY
20) JUDGMENT
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1 Defendants Michael Chertoff, Emilio Gonzalez, Condoleezza
2 Rice, and Maura Harty (collectively "Defendants" or "Government"),
3 by and through their undersigned counsel, respectfully file this
4 Reply Memorandum in support of Defendants' Motion to Dismiss.
5 Defendants further oppose Plaintiff's motion for summary judgment.
6 Although there is no issue of material fact in dispute, Defendants
7 assert that Plaintiff's claims fail as a matter of law, and assert
8 that the Court should dismiss Plaintiff's claims for lack of
9 jurisdiction in part and failure to state a claim under Fed. R.
10 Civ. P. 12(b)(6) in part, or, as Defendants have presented extra-
11 record evidence with their motion to dismiss, convert the motion
12 to dismiss into a motion for summary judgement and grant summary
13 judgement to Defendants.¹

14 Plaintiffs' Opposition to Defendants' Motion to Dismiss and
15 Cross Motion for Summary Judgment fails to adequately address the
16 Defendants' arguments. Broadly interpreting the Ninth Circuit's
17 decision in *Freeman v. Gonzales*, 444 F. 3d 1031 (9th Cir. 2006),
18 to cover all immediate relative petitions, as Plaintiffs appear to
19 be requesting, leads to absurd results. The requirement that all
20 immediate relative petitions be adjudicated based on the facts
21 extant at the time of filing -- without considering the facts
22 extant at the time of adjudication -- would require approving
23 petitions even where the qualifying marriage ends in divorce prior
24 to adjudication.

25
26 ¹ Summary judgement for Defendants would be proper even if the
27 motion to dismiss under Fed. R. Civ. P. 12(b)(6) is not converted to
28 a motion for summary judgment. See *Cool Fuel, Inc. v. Connett*, 685
F.2d 309, 312 (9th Cir. 1982).

1 Moreover, Defendants are already following the *Freeman*
2 decision in the Ninth Circuit. See *Effect of Form I-130*
3 *Petitioner's Death on Authority to Approve the Form I-130*,
4 attached to Defendants' Motion to Dismiss as Exhibit 1. The
5 Defendants' guidance specifies that, for cases arising in the
6 Ninth Circuit, adjudicators of the United States Citizenship and
7 Immigration Services ("USCIS") may, under *Freeman*, approve a Form
8 I-130 after the petitioner has died, if the case involves the same
9 essential facts, including the fact that alien filed the
10 adjustment application before the petitioner died, and if the
11 alien proves that the now-terminated marriage was legally valid,
12 and that the spouses did not marry to confer an immigration
13 benefit on the alien. Ex. 1 at 6-7. If the Form I-130 is
14 approved, USCIS will not deem the approval automatically revoked
15 on the petitioner's death under 8 C.F.R. § 205.1(a)(3)(i)(C)
16 (2007), if there is a person who is willing and able to file an
17 affidavit of support (Form I-864) on the alien's behalf, in place
18 of the Form I-864 that the citizen spouse would have been required
19 to submit. Ex. 1 at 7.

20 **ARGUMENT**

21 This Court should dismiss Plaintiffs' Complaint, in part, for
22 lack of subject matter jurisdiction over Plaintiffs' claims. Fed.
23 R. Civ. P. 12(b)(1). In addition, dismissal for failure to state
24 a claim under Rule 12(b)(6) is appropriate where Plaintiffs'
25 claims fail on the law of their jurisdiction. See Fed. R. Civ. P.
26 12(b)(6).

1 **I. THE CONCEPT OF A LEGAL MARRIAGE CANNOT BE SEPARATED FROM THE**
2 **LEGAL CONCEPT OF "SPOUSE."**

3 The overall purpose of the "immediate relative" provisions is
4 to promote the goal of family unity on behalf of the United States
5 citizen, a goal which can no longer be achieved once the United
6 States citizen dies. See *Burger v. McElroy*, 1999 WL 787661 at *6
7 (S.D.N.Y. 1999) ("The purpose of conferring immediate relative
8 status only to alien spouses of living United States citizens is
9 based on the intent of Congress to unite the family.").

10 Plaintiffs make a point that the word "marriage" is not
11 mentioned in the definition of "spouse" in the Immigration and
12 Nationality Act. Unless Congress clearly intended a specific,
13 technical, meaning, a statute is to be interpreted according to
14 the common, ordinary meaning of the words of the statute at the
15 time of enactment. See *BedRoc Ltd., LLC., v. United States*, 541
16 U.S. 176, 184, 124 S. Ct. 1587, 158 L. Ed. 2d 338 (2004); *Perrin v.*
17 *United States*, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199
18 (1979); *Burns v. Alcala*, 420 U.S. 575, 580-81, 95 S. Ct. 1180, 43
19 L. Ed. 2d 469 (1975). The common, ordinary meaning of the term
20 "spouse" is a married person. See *Black's Law Dictionary* (8th Ed.
21 2004) (definition of "spouse"). Federal law has adopted this same
22 basic definition of "spouse" for purposes of the administration of
23 every Federal statute and regulation:

24 In determining the meaning of any Act of Congress, or of
25 any ruling, regulation, or interpretation of the various
26 administrative bureaus and agencies of the United States,
27 . . . the word "spouse" refers only to a person of the
28 opposite sex who is a husband or a wife.

1 U.S.C. § 7 (1996). Thus, a person is a "spouse" only if he or
she is either a husband or a wife. *Id.* The common, ordinary

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1 definition of "husband" is "[a] married man; one who has a lawful
2 wife living." *Black's Law Dictionary*, at 741. The common,
3 ordinary definition of "wife" is "[a] woman united to a man by
4 marriage; a woman who has a husband living and undivorced." *Id.*
5 at 1598. In the United States, under the law of every State,
6 marriage ends when one spouse dies. See 52 Am. Jur. 2d, Marriage,
7 § 8.² Because the petitioning United States citizens are no longer
8 living, Plaintiffs are no longer "husbands" or "wives," and thus,
9 according to 1 U.S.C. § 7, they are no longer spouses, and thus
10 are no longer "immediate relatives" as defined in section
11 201(b)(2)(A)(i) of the Immigration and Nationality Act ("INA"), 8
12 U.S.C. § 1151(b)(2)(A)(i) (2007). Moreover, the concept of a
13 legal marriage runs throughout the common, ordinary definitions,
14 and cannot be divorced from the discussion.

15 Second, to the extent that 8 U.S.C. § 1151(b)(2)(A)(i) might
16 be said to be ambiguous, the courts is legally obligated to defer
17 to the agency's interpretation -- even where that interpretation
18 differs from prior Court of Appeals precedent. *National Cable &*
19 *Telecomm. Assn. v. Brand X Internet Services*, 545 U.S. 967 (2005);
20 *Gonzalez v. Dept. of Homeland Security*, --- F.3d ---, 2007 WL
21 4209273 (9th Cir. Nov. 30, 2007). The Defendants' conclusion that
22 a person is no longer a "spouse" if the other spouse has died is
23 fully consistent with the law in the United States. See 52 Am
24 Jur. 2d, Marriage, § 8. Thus, this Court should defer to the

25
26 ² In particular, California law follows this general rule.
27 See West's Ann. Cal. Fam. Code § 310(a) (1994) (death of one spouse
28 dissolves a marriage). Thus, none of the Plaintiffs is a "spouse,"
under the law of the State in which this Court sits.
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1 agency interpretation contained within the November 8, 2007 USCIS
2 Memo (attached to Defendants' Motion to Dismiss as Exhibit 1.³

3 **II. WHERE PLAINTIFFS RESIDE OUTSIDE OF THE NINTH CIRCUIT, NINTH
4 CIRCUIT LAW DOES NOT APPLY.**

5 A citizen begins the immigration process for a spouse by
6 filing with U.S. Citizenship and Immigration Services ("USCIS") an
7 alien relative visa petition, which is Form I-130. INA §
8 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i); 8 C.F.R. §§
9 204.1(a)(1) & 204.2(a). USCIS must conduct an investigation in
10 every Form I-130 immigrant visa petition case. INA § 204(b), 8
11 U.S.C. § 1154(b). USCIS may not approve Form I-130 on behalf of a
12 claimed immediate relative unless USCIS finds, as a result of this
13 investigation, "that the facts stated in the petition are true and
14 that the alien in behalf of whom the petition is made is an
15 immediate relative." *Id.* (emphasis added).

16 Under the clearly established precedents of the Board of
17 Immigration Appeals ("BIA" or Board"), the alien's eligibility for
18 the benefit sought is determined on the basis of the facts as they
19 exist on the date of adjudication or decision, not on the date of
20 application. *Matter of Alarcon*, 20 I. & N. Dec. 557, 562 (BIA
21 1992), and cases cited therein.⁴

24 ³ *But see Taing v. Chertoff*, --- F. Supp. 2d ---, 2007 WL
25 4348060 (D. Mass. Dec. 12, 2007); *Lockhart v. Chertoff*, No.
26 1:07-cv-00823-KMO (N. D. Ohio Jan. 7, 2008) (slip op.) (Attachment
27 A)

28 ⁴ The Board in *Matter of Alarcon* also held that a change in
the law must generally be applied to pending cases. *Matter of
Alarcon*, 20 I. & N. Dec. at 562.

1 In the immigration context, determinations by the Board of
2 Immigration Appeals are binding on the government and apply
3 nation-wide. See 8 C.F.R. § 1003.1(g). If, however, a court of
4 appeals comes to a position contrary to the Board in a precedent
5 decision, the government follows that position only within the
6 jurisdiction of that particular Court of Appeals. *Matter of*
7 *Anselmo*, 20 I. & N. Dec. 25 (BIA 1989). The governing Board
8 precedents specify that a Form I-130 is to be denied if the
9 citizen petitioner has died. *Matter of Sano*, 19 I. & N. Dec. 299
10 (BIA 1985); *Matter of Varela*, 13 I. & N. Dec. 453 (BIA 1970). The
11 precedents, of course, are subject to the exceptions that Congress
12 has enacted more recently, which permit only a narrow subset of
13 widowed aliens, who were married less than two years, to retain
14 their "immediate relative" status after the death of their
15 spouses. These later exceptions indicate that Congress clearly
16 intended that aliens married less than two years at the time their
17 U.S. citizen spouse dies are no longer entitled to "immediate
18 relative" status.

19 Moreover, the fact that Congress has passed two specific,
20 narrowly-tailored exceptions to the general rule supports the
21 agency's position that *Freeman* was wrongly decided, and buttresses
22 its determination not to follow *Freeman* outside of the Ninth
23 Circuit. See Pub. L. 107-56, 115 Stat. 272, §§ 421(a),
24 (b)(1)(B)(i) (2002) (creating a specific exception for "surviving
25 spouses" of those who died in the 9/11 terrorist attacks in the
26 United States); Pub. L. 108-36, 117 Stat. 1693, Div. A, Title
27 XVII, § 1703(a)-(e) (2003) (creating a specific exception for

1 spouses of those who were active-duty military and died as a
2 result of injury or disease incurred in or aggravated by combat).
3 Section 421 of Pub. L. 107-56 is particularly telling on this
4 point. For family-sponsored and immediate relative cases,
5 Congress intended § 421 to benefit an alien relative whose
6 relative's visa petition "was revoked or terminated (or otherwise
7 rendered null)" by the petitioner's death. Pub. L. 107-576,
8 § 421(b)(1)(B)(i), 115 Stat. at 356. There would be no need for
9 the enactment of § 421 if, as the *Freeman* panel found, the
10 petitioner's death does not render the visa petition null.

11 In addition, the final affidavit of support rule, 71 *Fed. Reg.*
12 35732 (June 21, 2006), also supports the Government's
13 interpretation. This rule provides regulations to administer INA
14 § 213A, 8 U.S.C. § 1183a. The Government received several
15 comments on the prior interim rule, dealing with the validity of a
16 visa petition once the petitioner has died. 71 *Fed. Reg.* at
17 35735. In response to the comments, the Attorney General and the
18 Secretary of Homeland Security specifically endorsed the Board's
19 holding in *Matter of Varela* that the visa petitioner's death
20 requires denial of the Form I-130. *Id.* The Government has also
21 crafted a special humanitarian exception for those with
22 previously-approved I-130 petitions for cases with special
23 humanitarian circumstances, by providing for the conversion of a
24 spousal I-130 petition into a widow's I-360 petition, if the
25 requirements of the second sentence in § 1151(b)(2)(A)(i) are met
26 when the citizen spouse dies. 8 C.F.R. §§ 204.2(b)(1)(i)-(iv)
27 (2006); 8 C.F.R. § 205.1(a)(3)(i)(C)(2).

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1 Requiring an I-864 from a substitute sponsor in order to
2 reinstate a revoked approval is not a matter of "importing" an
3 inadmissibility issue into the adjudication of the I-130. Rather,
4 this requirement is a limit on the discretion not to revoke a
5 petition. The substitute sponsor provision, itself, provides
6 support for the view that the petitioner's death is a proper basis
7 for revoking approval of the visa petition. This conclusion flows
8 from the fact that the statute permits a substitute sponsor only
9 if the Secretary decides not to revoke the petition's approval.
10 INA § 213A(f) (5) (B) (ii), 8 U.S.C. § 1183a(f) (5) (B) (ii).⁵

11 Plaintiffs, like the *Freeman* panel, misconstrue the Board's
12 precedents in *Matter of Sano* and *Matter of Varela*. The actual
13 result in each case was exactly the same: the Board affirmed the
14 INS decisions denying the respective Forms I-130 due to the
15 petitioner's death. The only difference between these two
16 decisions was the reason given. In *Matter of Varela*, the Board
17 assumed it had jurisdiction and decided the case on the merits,

18
19 ⁵ Each Plaintiff will require a new affidavit of support, even
20 if the deceased spouse filed one. Section 1182(a)(4)(C) of 8 U.S.
21 Code specifically requires a valid affidavit of support under
22 section 1183a for all immediate relative and family preference cases
23 (with some exceptions, such as for battered spouses and 2-year
24 married widows), and not just for those who, under the factors in
25 section 1182(a)(4)(B), are "likely to become a public charge." The
26 argument that the Estate can take on the deceased spouse's
27 obligation is contrary to the affidavit of support rule, since the
28 sponsor must be an individual, and so cannot be a juridical person.
8 C.F.R. 213a.1 (definition of "sponsor"). Also, the sponsor's
obligation does not begin until the alien becomes a lawful permanent
resident, 8 C.F.R. 213a.2(e), and ends when the sponsor dies, 8
C.F.R. 213a.2(e)(2)(ii). Thus, if the sponsor dies before the alien
becomes an lawful permanent resident, there is not a valid I-864,
and a substitute sponsor is needed. Otherwise, the alien is
inadmissible under 8 U.S.C. § 1182(a)(4).

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1 holding that the visa petitioner's death required denial of the
2 Form I-130 because the beneficiary was no longer the spouse of a
3 citizen. 13 I. & N. Dec. at 454. The Board did not, in *Sano*,
4 question its conclusion in *Varela* that a person is no longer a
5 "spouse" after the other spouse had died. Rather, the Board held
6 that the beneficiary's lack of standing would have been the more
7 proper basis for the decision in *Varela*. *Matter of Sano*, 19 I. &
8 N. Dec. at 300-01. The Secretary and the Attorney General,
9 moreover, have specifically endorsed the conclusion from *Varela*
10 that "[t]here is no authority to approve a visa petition after the
11 petitioner dies." 71 Fed. Reg. at 35,735.

12 Hence, the law as it exists outside of the Ninth Circuit is
13 that an alien married less than two years at the time of his or her
14 United States citizens spouse's death automatically loses
15 "immediate relative" status if the I-130 petition has not been
16 approved. Accordingly, the Court should dismiss the claims of
17 those residing outside of the Ninth Circuit for failure to state a
18 claim upon which relief may be granted.

19 **III. PLAINTIFFS' APA CLAIMS FAIL FOR LACK OF A FINAL ORDER OR LACK**
20 **OF EXHAUSTION.**

21 The Administrative Procedures Act ("APA"), by its terms,
22 provides a right to judicial review of all "final agency actions
23 for which there is no other adequate remedy in a court."⁶ 5 U.S.C.
24 § 704. In order for an action to be final, and thus reviewable

25
26 ⁶ A separate mandamus analysis is not required. See, e.g.,
27 *R.T. Vanderbilt Co. v. Babbitt*, 113 F.3d 1061, 1065 (9th Cir. 1997)
(analyzing claim under the APA rather than mandamus where mandamus
and APA relief are the same).

1 pursuant to the APA, the action must (1) "mark the 'consummation'
2 of the agency's decision-making process," and (2) the action "must
3 be one by which 'rights or obligations have been determined,' or
4 from which 'legal consequences will flow.'" *Bennett v. Spear*, 520
5 U.S. 154, 178, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997). In
6 addition, plaintiffs seeking APA review are generally required to
7 exhaust their administrative remedies.

8 Defendants agree that exhaustion of administrative remedies is
9 not *statutorily* required. See *Darby v. Cisneros*, 509 U.S. 137,
10 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993). However, exhaustion of
11 administrative remedies is also prudentially required, and must be
12 specifically waived by the Court: "Under the doctrine of
13 exhaustion, 'no one is entitled to judicial relief for a supposed
14 or threatened injury until the prescribed . . . remedy has been
15 exhausted.'" *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004)
16 (quoting *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct.
17 1657, 23 L. Ed. 2d 194 (1969)). "Lower courts are, thus, not free
18 to address the underlying merits without first determining [that]
19 the exhaustion requirement has been satisfied or properly waived."
20 *Laing*, 370 F.3d at 998 (citing *Montgomery v. Rumsfeld*, 572 F.2d
21 250, 254 n.4 (9th Cir. 1978)).

22 Plaintiffs erroneously assert that exhaustion of remedies
23 would be futile. For those Plaintiffs residing in the
24 jurisdiction of the Ninth Circuit, USCIS has announced that it
25 will follow the *Freeman* decision in the Ninth Circuit. See
26 Exhibit 1, Defendants' Motion To Dismiss. As such, the claims of
27 all Plaintiffs residing within the Ninth Circuit -- plaintiffs

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1 Hootkins, Moncayo-Gigax, DeMaily, Vargas de Fisher, Lockett,
2 Brenteson, Gobeil, Win, Poindexter, Rudl, and Nguyen should be
3 dismissed for failure to exhaust non-futile, available
4 administrative remedies. Where those individual Plaintiffs have
5 already filed motions to reopen with USCIS, they should be
6 required to complete the administrative process they have already
7 commenced. The remaining Plaintiffs residing within the Ninth
8 Circuit should seek reopening of their applications, if they have
9 not done so already - an available remedy. Given the USCIS policy
10 guidance, it is reasonable assume that the motions will lead to
11 approval of the visa petitions, at least for those plaintiffs who
12 can show that their marriages were bona fide and that they have
13 substitute affidavit of support sponsors. See Ex. 1.

14 Plaintiffs seek to counter defendants argument requiring
15 exhaustion of administrative remedies through the renewal of
16 applications for adjustment of status in removal proceedings⁷ by
17 stating that aliens themselves cannot initiate removal
18 proceedings. However, they seek an injunction barring the agency
19 from commencing removal proceedings. See Plaintiffs' Motion for A
20 Preliminary Injunction.

21 Finally, Plaintiffs utterly fail to address Defendants'
22 argument that the claims of plaintiffs Walsh and Lu should also be
23 dismissed for failure to exhaust available administrative
24

25 ⁷ See *Rivera-Durmaz v. Chertoff*, 456 F. Supp. 2d 943, 951-52
26 (N.D. Ill. 2006) (declining to review plaintiffs eligibility for
27 adjustment of status until they exhausted their administrative
remedies - specifically, consideration of the matter by an
Immigration Judge and review by the Board).

1 remedies, as neither requested humanitarian reinstatement of their
2 I-130 petitions pursuant to 8 C.F.R. § 205.1(a)(3)(i)(C)(3).
3 Accordingly, the claims of plaintiffs Walsh and Lu should be
4 dismissed for failure to exhaust administrative remedies.

5 **IV. MANY PLAINTIFFS' CLAIMS SHOULD BE BARRED FOR LACK OF A TIMELY
6 APPEAL.**

7 It is well established that the *res judicata* "consequences of
8 a final, unappealed judgment on the merits [are not] altered by
9 the fact that the judgment may have been wrong or rested on a
10 legal principle subsequently overruled in another case."

11 *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.
12 Ct. 2424, 2428, 69 L. Ed. 2d 103 (1981) (emphasis added).

13 Therefore, any Plaintiff whose I-485 application for adjustment of
14 status was adjudicated prior to the decision of the *Freeman* case
15 by the Ninth Circuit, and who had not appealed the denial of that
16 application (or filed a motion to reopen after the *Freeman*
17 decision) is barred by *res judicata* from having his or her denial
18 reviewed under the post-*Freeman* interpretation of the relevant
19 statutory language, where they have not sought agency
20 reconsideration of the decision post *Freeman*. Of the Plaintiffs
21 residing in the Ninth Circuit, none filed his or her application
22 for adjustment of status after the April 21, 2006, *Freeman*
23 decision, and all but one application was initially denied prior
24 to April 21, 2006. Plaintiffs DeMailly, Gobeil and Nguyen failed
25 to file timely appeals of their final, pre-April 2006, agency
26 decisions.

27 Of the plaintiffs residing outside of the Ninth Circuit with
28 final agency decisions, *res judicata* would bar them from re-

Defendants' Reply in Support of Motion to Dismiss Case No. CV07-05696 (CAS)
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1 litigating their case at this time. Those barred include
2 plaintiffs Heard, Fishman-Corman, Arias-Argulo, Bernstein and
3 Bayor. Accordingly, the claims of these plaintiffs should be
4 dismissed.

5 Plaintiffs appear to suggest that lack of an appeal should not
6 bar their claims in this case, stating that they had no venue in
7 which to raise their claims. This argument is contradicted by the
8 existence of cases filed on this issue in district courts
9 throughout the United States.

10 **V. THE COURT SHOULD SEVER THE CLAIMS OF THOSE NOT RESIDING WITHIN**
11 **THE JURISDICTION OF THE NINTH CIRCUIT.**

12 Should the Court not dismiss the Complaint for lack of
13 jurisdiction or for failure to state a claim, the Court should
14 sever the claims of all individuals not currently within the
15 jurisdiction of the Ninth Circuit under Fed. R. Civ. P. 21. See
16 *Coughlin v. Rogers*, 130 F.3d 1348, 1350-51 (9th Cir. 1997)
17 (finding joinder inappropriate due to unique nature of each
18 application). As in *Coughlin*, severance is appropriate in this
19 case on the basis that the Ninth Circuit's recent decision in
20 *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006), has created a
21 situation that requires the application of "different legal
22 standards" to different plaintiffs' claims, depending on the
23 residence of the individual. Therefore, since "different legal
24 standards" would be applied to different plaintiffs' claims this
25 case does not present common questions of law and fact and the
26 claims of plaintiffs residing outside of the Ninth Circuit must be
27 severed under Fed. R. Civ. P. 21.

1 CONCLUSION

2 Plaintiffs' Complaint should be dismissed for lack of
3 jurisdiction in part, and for failure to state a claim in part.
4 In the alternative, the Court should deny Plaintiffs' Motion for
5 Summary Judgment and enter judgment on behalf of Defendants.

6
7 Respectfully Submitted,

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20 Dated: 7 January 2008

1
2 **CERTIFICATE OF SERVICE**

3 Case No. C-07-5696-CAS

4 I hereby certify that on this 7th day of January 2008,
5 true and correct copies of the Defendants' **REPLY IN SUPPORT OF**
6 **MOTION TO DISMISS, AND OPPOSITION TO PLAINTIFFS' MOTION FOR**
7 **SUMMARY JUDGMENT** were served pursuant to the district court's
8 ECF system as to ECF filers on January 7, 2008, to the
9 following ECF filers:

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