UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MADKUDU INC., et al.,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES, et al.,

Defendants.

Case No. 20-cv-02653-SVK

ORDER DENYING DEFENDANTS' MOTION TO SEVER AND DISMISS

Re: Dkt. Nos. 47, 48, 49

Defendants U.S. Citizenship and Immigration Services and Kenneth T. Cuccinelli (collectively, "Defendants") move to sever and dismiss Plaintiffs MadKudu Inc., Quick Fitting Inc., Hanguang International Inc., and 2nd Street USA, Inc.'s (collectively, "Plaintiffs") putative class action first amended complaint ("Complaint") (Dkt. 39). Dkt. 47. Defendants contend that Plaintiffs' claims are misjoined and subject to dismissal for mootness or improper venue. *Id.* Plaintiffs oppose the motion. Dkt. 48.

All parties have consented to the jurisdiction of the undersigned magistrate judge. Dkts. 13, 33, 34, 43. Pursuant to Civil Local Rule 7-1(b), the Court deems this matter suitable for determination without oral argument. Having carefully considered the briefs, the case file, and the relevant law, the Court **DENIES** Defendants' motion to sever and dismiss for the reasons set forth below.

I. BACKGROUND

A. The H-1B Visa

The Immigration and Nationality Act allows employers to petition for foreign workers in specialty occupations to come to the United States to perform services or labor. 8 U.S.C. § 1101(a)(15)(H)(i)(b1); 8 C.F.R. § 214.2(h)(1)(i). The purpose of the H-1B provisions is to help

employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals who are not otherwise authorized to work in the United States. 8 U.S.C. § 1101(a)(15)(H)(i)(b1); 8 C.F.R. § 214.2(h)(1)(i). A "specialty occupation" is an occupation that requires theoretical and practical application of a body of highly specialized knowledge and a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. § 1184(i)(1); 8 C.F.R. § 214.2(h)(4)(i)(A)(1). The position must meet one of the four criteria to constitute a specialty occupation position:

> (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
> (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
> (3) The employer normally requires a degree or its equivalent for the position; or
> (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A).

B. Named Plaintiffs

Plaintiff MadKudu Inc. ("MadKudu") is a marketing analytics software corporation headquartered in Mountain View, California that filed an H-1B petition for a market research analyst position on or about April 2, 2019. Dkt. 39 ¶¶ 12, 33, 34. Defendant U.S. Citizenship and Immigration Services ("USCIS") denied the petition on February 24, 2020 stating, among other things, that MadKudu failed to demonstrate that the position satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the first regulatory test for a specialty occupation. *Id.* at ¶¶ 12, 36, 37. On May 11, 2020, USCIS approved MadKudu's H-1B petition, offering no explanation as to its rationale for reversing its previous decision. *Id.* at ¶ 39.

Plaintiff Quick Fitting, Inc. ("Quick Fitting"), a plumbing fittings supplier headquartered in Warwick, Rhode Island, also filed an H-1B petition for a market research analyst position on or about August 20, 2019. *Id.* at ¶¶ 13, 40, 41, 43, 44. USCIS denied the petition on January 23, 2020, stating, among other things, that Quick Fitting failed to demonstrate that the position satisfied 8

C.F.R. § 214.2(h)(4)(iii)(A)(1), the first regulatory test for a specialty occupation. *Id.* On May 11, 2020, USCIS approved Quick Fitting's H-1B petition, offering no explanation as to its rationale for reversing its previous decision. *Id.* at ¶ 46.

Plaintiff 2nd Street USA, Inc. ("2nd Street"), a second-hand clothing corporation headquartered in Los Angeles, California, filed an H-1B petition for a market research analyst position on or about April 11, 2019. *Id.* at ¶¶ 14, 47, 48, 50, 51. USCIS denied the petition on September 12, 2019, stating, among other things, that 2nd Street failed to demonstrate that the position satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the first regulatory test for a specialty occupation. *Id.*

Hanguang International Inc. ("Hanguang International"), an educational consulting services corporation headquartered in New York, New York, filed an H-1B petition for a market research analyst position on or about April 2, 2019. *Id.* at ¶¶ 15, 54, 56. 57. USCIS denied the petition on November 1, 2019, stating, among other things, that Hanguang International failed to demonstrate that the position satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the first regulatory test for a specialty occupation. *Id.*

C. Market Research Analyst Position

Plaintiffs allege that USCIS has a "pattern and practice" of erroneously denying H-1B petitions for the market research analyst positions. *Id.* at ¶ 29. Specifically, Plaintiffs allege that after identifying the occupation within which the position falls, USCIS consults the Occupational Outlook Handbook ("OOH"), which provides for that position. *Id.* at ¶ 25. Plaintiffs allege the OOH establishes that the market research analyst position satisfies the first regulatory test for a "specialty occupation" because (a) it states the market research analyst position "typically need[s]" a bachelor's degree or in some instances, a master's degree, satisfying that a bachelor's degree is "normally" the minimum degree requirement for the occupation and (b) it requires a bachelor's degree in "market research or a related field" and identifies coursework in statistics, research methods, and marketing as "essential," demonstrating that a "body of highly specialized knowledge" is necessary to perform the market research analyst job requirements. *Id.* at ¶ 28. This information allegedly demonstrates that the degree is in a specific specialty, but, accordingly to Plaintiffs,

USCIS erroneously ignores the regulatory term "normally" and finds that OOH indicates several degrees or fields of study may qualify a person to perform the duties of a market research analyst, concluding this indicates the degree requirement is not in a specific specialty. *Id.* at ¶¶ 28, 29.

Plaintiffs allege that they are aware of at least 60 H-1B market research analyst petitions that were denied in the past three calendar years. *Id.* at ¶ 32. In all the denials, USCIS stated the same reasoning and similar language, finding that the OOH did not establish that a market research analyst was a specialty occupation under the first regulatory test. *Id.* at ¶¶ 32, 63. These decisions allegedly represent only a fraction of USCIS' decisions denying market research analyst H-1B petitions on this basis during this period and the pattern and practice is continuing. *Id.* at ¶¶ 32, 64.

II. LEGAL STANDARD

A. Motion to Sever Pursuant to Federal Rule of Civil Procedure 21

Rule 20(a) of the Federal Rules of Civil Procedure ("FRCP") permits plaintiffs to join in one action if: "(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action." Fed. R. Civ. P. 20(a)(1). If the test for permissive joinder is not satisfied, a court has discretion to sever the misjoined parties, so long as no substantial right will be prejudiced by the severance. *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997); *see* Fed. R. Civ. P. 21. "Even once these requirements are met, a district court must examine whether permissive joinder would 'comport with the principles of fundamental fairness' or would result in prejudice to either side." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (quoting *Desert Empire Bank v. Insurance Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980)). "[P]ermissive joinder is to be construed liberally in order to promote trial convenience and to expedite the final determination of disputes, thereby preventing multiple lawsuits." *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977).

B. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(1)

A defendant may move to dismiss an action for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). When a defendant moves to dismiss a complaint for lack

of subject matter jurisdiction, the plaintiff bears the burden of proving that jurisdiction exists. *Thornhill Pub. Co., Inc. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citation omitted). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* Courts resolve a facial attack "as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citation omitted). On the other hand, "in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone*, 373 F.3d at 1039.

C. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(3)

A party may bring a motion to dismiss an action for improper venue under Federal Rule of Civil Procedure 12(b)(3). If venue is found to be improper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). When venue is challenged, the plaintiff bears the burden of demonstrating that venue is proper. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979) ("Plaintiff had the burden of showing that venue was properly laid in the Northern District of California.").

The question of whether venue is wrong or improper is generally governed by 28 U.S.C. § 1391. *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. Of Texas*, 571 U.S. 49, 55 (2013) (internal quotations omitted). In cases brought against agencies, officers, or employees of the United States, venue is proper "in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). If the case falls within one of the three categories, venue is proper. *See Atlantic Marine Const. Co., Inc.*, 571 U.S. at 56.

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III. DISCUSSION

A. Severance

Defendants contend that severance as to all four named Plaintiffs is warranted in the instant litigation because the claims do not arise out of the same transaction or occurrence and do not present common questions of law or fact. Dkt. 47 at 9, 16. Plaintiffs dispute Defendants' assertion of severance, contending that this case was brought as a class action to raise issues that are common to similarly situated parties. Dkt. 48 at 7. Further, Plaintiffs contend they are seeking a right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and a common question of law. *Id.* at 8. In its reply, Defendants argue that while there may be similar issues of law, that does not mean the cases involve the same transaction, occurrence, or series of transactions or occurrences. Dkt. 49 at 7.

1. Same Transaction, Occurrence, or Series of Transactions or Occurrences

The first prong of the Rule 21 severance standard refers to "similarity in the factual background of a claim." *Coughlin*, 130 F.3d at 1350. "By its terms, this provision requires factual similarity in the allegations supporting Plaintiffs' claims." *Visendi v. Bank of America, N.A.*, 733 F.3d 863, 870 (9th Cir. 2013). Even though there may be different occurrences, joinder in a single case may be appropriate where the claims involve enough related operative facts. *Nguyen v. CTS Electronics Manufacturing Solutions Inc.*, 301 F.R.D. 337, 341 (N.D. Cal. 2014).

In *Coughlin*, 49 plaintiffs brought suit against the Immigration and Naturalization Service ("INS") and its then-Director, Richard Rogers, alleging that defendants unreasonably delayed adjudicating plaintiffs' applications and petitions. *Coughlin*, 130 F.3d at 1349. The plaintiffs' applications or petitions fell into six distinct categories, with some applications and petitions brought by United States citizens on behalf of an alien spouse or child, others brought by aliens on behalf of themselves. *Id.* at 1349–50. In short, the applications and petitions were significantly different from one another. On these facts, the Ninth Circuit reasoned that each plaintiff "waited a different length of time, suffering a different duration of alleged delay" and in some instances, the delay was disputed and varied from case to case. *Id.* at 1350. The Ninth Circuit found that the existence of a common

allegation of delay alone did not suffice to create a common transaction or occurrence. *Id.*

Defendants argue that as in *Coughlin*, each applicant in the instant case presents a different factual situation and therefore each must receive personalized attention by the agency and the Court. Dkt. 47 at 17. Plaintiffs contend that *Coughlin* highlights an important difference with the instant litigation, which is challenging a uniform pattern and practice of Defendants that adversely affects all Plaintiffs. Dkt. 48 at 9. The Court agrees with Plaintiffs. The plaintiffs in *Coughlin* had not alleged a pattern or policy of delay by the INS in dealing with the applications or petitions, but rather, claimed that in specific instances, the applications and petitions were not addressed in a timely manner. *Coughlin*, 130 F.3d at 1350. In severing the plaintiffs' claims, the Ninth Circuit purposefully recognized that the plaintiffs "do not allege that their claims arise out of a systemic pattern of events and, therefore, arise from the same transaction or occurrence." *Id.*

Here, Plaintiffs are not merely claiming that in specific instances, the H-1B petitions they filed on behalf of noncitizens they sought to hire in the market research analyst occupation were denied. Rather, Plaintiffs are challenging USCIS' pattern and practice of arbitrarily and unlawfully denying H-1B petitions for market research analysts. Dkt. 39 ¶¶ 1, 6, 29, 32, 65; Dkt. 48 at 8. The fact that H-1B denials were adjudicated at separate USCIS service centers across the country does not undermine Plaintiffs' argument that the denials involve the same series of occurrences. Accordingly, the Court concludes that Plaintiffs alleging their claims arise out of a systemic pattern of events and result in denial of the H-1B petitions for the market research analyst occupation are sufficiently related to constitute a common transaction or occurrence.

2. Common Questions of Law or Fact

The second prong is whether any common questions of law or fact will arise in the action. "Commonality under Rule 20(a)(1)(B) is not a particularly stringent test" and requires only a single common question. *Nguyen*, 301 F.R.D. at 341 (citations omitted).

Defendants argue that each plaintiff employer has a "separate case to plead" and even if a decision on the common issue of the validity of the government's application of a specific regulation or statute might impact each Plaintiff's individual case, it will not necessarily be dispositive. Dkt. 47 at 19. Plaintiffs counter by pointing to the common question of law of whether Defendants are

denying H-1B petitions for market research analysts based on a misinterpretation of the statutory term "specific specialty" and the first regulatory test as well as an erroneous reading of the OOH profile for market research analysts. Dkt. 48 at 9.

Coughlin is both distinguishable and instructive for the second prong as well. In addressing this prong, the Ninth Circuit again referenced that the plaintiffs are not alleging that Defendants engaged in a policy of delay. *Coughlin*, 130 F.3d at 1351. Additionally, the Ninth Circuit concluded that plaintiffs failed the second prong of the test because each category of Plaintiffs filed different applications, petitions, or forms with different legal standards as to each type of application or petition. *Id.* As a result, each applicant or petitioner presented a different factual situation and required personalized attention by the INS. *Id.* For the reasons stated in Section III.A.1 above, the instant case is easily distinguishable.

Stellar IT Solutions, Inc. v. United States Citizenship and Immigration Services, No. 18-cv-2015 (RC), 2019 WL 3430746 (D.D.C. July 30, 2019) is also distinguishable. Plaintiff InDepth Engineering Solutions, LLC filed a motion to intervene in a case brought by Stellar IT Solutions, Inc., who had filed a lawsuit after the company's H-1B visa on behalf of a software engineer was denied. *Id.* at *2–3. The district court found that Indepth's motion to intervene did not raise common questions of law or fact as it did not appear that the two petitions shared "a single piece of evidence in common" and the two job positions were different. *Id.* at 4. Furthermore, Stellar IT's case involved an additional legal question that was not at issue in InDepth's case. *Id.*

In direct contrast to *Stellar IT Solutions*, the instant litigation is not simply about the denial of one employer's H-1B petition. Rather, Plaintiffs are claiming USCIS has a pattern and practice of misinterpreting the OOH's profile of a market research analyst and has engaged in a systemic pattern or practice of unlawful decision-making. Dkt. 39 ¶¶ 6, 29, 32, 65; Dkt. 48 at 14, 16–17. Further, the claims are specific to the market research analyst occupation and all involve the first regulatory test which authorizes a position to qualify as a specialty occupation. Dkt. 39 ¶¶ 3–6; Dkt. 48 at 8. As a result, the claims involve common questions of law regarding USCIS' alleged pattern and practice of unlawful decision-making in regards to the H-1B petitions for the market research analyst occupation. Accordingly, Defendants' motion to sever is **DENIED**.

B. Mootness

Defendants contend that the instant litigation is moot as to MadKudu and Quick Fitting because they obtained the H-1B visa approvals they sought and therefore should be dismissed from this action. Dkt. 47 at 20–21. Defendants further contend that the "voluntary cessation" and "capable of repetition, yet evading review" exceptions to the mootness doctrine do not apply. *Id.* at 21. MadKudu and Quick Fitting do not dispute that their H-1B decisions were later reversed and the H-1B petitions were ultimately approved. Dkt. 39 ¶¶ 39, 46. However, MadKudu and Quick Fitting dispute Defendants' assertion of mootness and argue that they retain a personal stake in the case. Dkt. 48 at 15–16. Plaintiffs also assert this Court can grant effective relief to 2nd Street and Hanguang International and the putative class. *Id.* Finally, Plaintiffs argue that their claims satisfy two of the exceptions to the mootness doctrine: the "voluntary cessation" and "capable of repetition yet evading review" exceptions. *Id.* at 16.

1. Voluntary Cessation

Defendants contend that the voluntary cessation doctrine does not apply here because USCIS approved MadKudu and Quick Fitting's H-1B petitions that were at issue in this litigation and there is "no likelihood of recurrence of the challenged activity." Dkt. 47 at 21 (internal quotations omitted). Further, Defendants contend that any claim by MadKudu and Quick Fitting that USCIS will deny their future H-1B extension petitions for the same market research analyst positions is speculative. *Id.*

"A case becomes moot . . . when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1152 (9th Cir. 2019) (citing *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (citations and internal quotation marks omitted). "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citations and internal quotation marks omitted). "In accordance with this principle, the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: A case might become moot if subsequent events

made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* (citations and internal quotation marks omitted). The "heavy burden" of persuading the court that the challenged conduct cannot reasonably be expected to recur lies with the party asserting mootness. *Id.* (citations and internal quotation marks omitted). In order for this exception to apply, "the defendant's voluntary cessation must have arisen *because of* the litigation." *Public Utilities Comm'n of State of Cal. v. F.E.R.C.*, 100 F.3d 1451, 1460 (9th Cir. 1996) (citation omitted).

In *Sze v. I.N.S.*, 153 F.3d 1005 (9th Cir. 1998), *overruled in part by United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004), the plaintiffs asserted that the INS failed to make a determination to grant or deny their applications within the required timeframe. During the pendency of the action, the INS naturalized some of the named plaintiffs. *Id.* at 1008. The plaintiffs asserted that the timing of the INS' decisions to naturalize the named plaintiffs indicate the applications were approved because of the litigation. *Id.* The Ninth Circuit reasoned that it appeared that the INS acted on the naturalization applications "in due course, albeit significantly delayed due course" and Plaintiffs demonstrated "no more than correlation" and failed to show causation. *Id.* Further, the Ninth Circuit reasoned that because the INS altered the naturalization application process, the class of potential plaintiffs "has effectively been closed" and there is "little likelihood of recurrence of the challenged activity." *Id.* at 1008–09 (internal quotations omitted).

In contrast to the plaintiffs in *Sze* who had not received a determination in their applications when the lawsuit was filed, USCIS denied Plaintiffs' H-1B petitions prior to this lawsuit. After the initial denials in their H-1B petitions and less than four weeks after the lawsuit was filed, Plaintiffs argue that USCIS took the "extraordinary, *sua sponte* step" of reopening and re-adjudicating MadKudu and Quick Fitting's denied petitions. Dkt. 48 at 19. Plaintiffs contend that this timing demonstrates that Defendants took this action specifically in response to the lawsuit and that Defendants have failed to show any evidence showing the contrary. *Id.* Further, Plaintiffs point out that Defendants have sought and continue to seek dismissal of the lawsuit based upon the approval of those petitions. *Id.* Defendants state that USCIS' *sua sponte* reopening and approval of their cases was not "extraordinary," acknowledging that it was "not uncommon for the agency to reconsider its initial decision following the commencement of a lawsuit, and represents a good faith

effort by the parties to conserve judicial resources by administratively resolving the issues in the case in lieu of litigation." Dkt. 49 at 12. Defendants further argue that because they only reopened and approved two of the four named Plaintiffs' H-1B petitions, USCIS' actions could not have been in direct response to the instant litigation. *Id.* at 13. The Court does not find this latter point persuasive. Rather, the timing of USCIS' approval of two of the Plaintiffs' petitions along with USCIS' acknowledgment that it often revisits petitions following the commencement of a lawsuit together demonstrate that USCIS' voluntary cessation arose *because of* the instant litigation.

The Court also disagrees with Defendants' assertion that there is no likelihood of recurrence of the challenged activity. Unlike in *Sze* where some of the named plaintiffs were naturalized and the class of potential plaintiffs effectively closed due to an alteration of the naturalization application process, there is a likelihood that the named Plaintiffs in the instant litigation will experience the challenged activity again. In *Sze*, once plaintiffs received their naturalization, it was "highly unlikely that they would ever have to repeat the process." *Sze*, 153 F.3d at 1009. However, MadKudu and Quick Fitting have both asserted they plan to file additional H-1B petitions for the continuation of their respective market research analysts' employment. Dkt. 48 at 16–17; Dkt. 48-1 at ¶ 10; Dkt. 48-2 at ¶ 7. Moreover, there is a likelihood that similarly situated employers will submit H-1B petitions to hire a new employee or to keep an employee in the market research analyst position. As such, the allegedly wrongful behavior could reasonably be expected to recur whenever employers submit H-1B petitions for the market research analyst occupation. Consequently, the Court does not find that Defendants have overcome the "heavy burden" of persuading the Court that the challenged conduct cannot reasonably be expected to recur and finds that the voluntary cessation exception applies.

Further, Defendants' argument that this case is moot ignores the requests for relief and Plaintiffs' assertions that they are challenging USCIS' denial of H-1B petitions on behalf of themselves *and all others who are similarly situated*. Dkt. 39 ¶ 59; Dkt. 48 at 15–16; *see Al Otro Lado, Inc. v. Nielsen*, 327 F. Supp. 3d 1284, 1297 (S.D. Cal. 2018) (finding that the plaintiffs sought other forms of relief including declaratory judgment that defendants' "policies, practices, acts and/or omissions" violate various laws and Defendants made "no meaningful attempt to argue that their

agreement to process the Individual Plaintiffs moots these requests for injunctive and declaratory relief"). Indeed, in *PayJoy, Inc. v. Cuccinelli*, No. 19-cv-03977-HSG, 2020 WL 1812193, at *2 (N.D. Cal. Apr. 9, 2020), the district court deemed it no longer had jurisdiction over the case only "[b]ecause the *exact relief* sought in this action, requiring Defendant to approve a H-1B petition" had already been granted (emphasis added). Here, Plaintiffs are seeking "a declaration that Defendants' adjudicatory practices with respect to H-1B petitions for Market Research Analysts violates the APA, the INA and the regulations" and are seeking "an order that they immediately adjudicate all such petitions in accordance with the law." Dkt. 48 at 15–17. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. S.E.I.U, Local 1000*, 567 U.S. 298, 307 (citations and internal quotations omitted). "[A]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Ellis v. Brotherhood of Ry., Airline and S.S. Clerks, Freight Handlers, Express and Station Emps, et al.*, 466 U.S. 435, 442 (1984).

Additionally, even if the claim of the named plaintiff has become moot, the controversy may still exist between a named defendant and a member of the class represented by the named plaintiff. *See Sosna v. Iowa*, 419 U.S. 393, 402–03 (1975). Indeed, "the putative class action nature of this case does change the Court's analysis" and "[c]ourts are sensitive to assertions of mootness in the class action context." *Al Otro Lado, Inc.*, 327 F. Supp. 3d at 1303. Plaintiffs brought this pattern or practice claim as a class action and the operative complaint is on behalf of the four named Plaintiffs and similarly situated H-1B petitioners. Dkt. 39 ¶¶ 1, 59. As a result, this case is not moot given that it remains possible for the Court to grant effectual relief to the named Plaintiffs and the similarly situated H-1B petitioners. Because the Court finds that the voluntary cessation exception to mootness applies in this case, the Court need not consider whether the "capable of repetition, yet evading review" exception to the mootness doctrine applies. Accordingly, Defendants' motion to dismiss pursuant to Rule 12(b)(1) is **DENIED**.

IV. VENUE

Defendants contend that Plaintiffs 2nd Street, located in Los Angeles, California, and Hanguang International, operating out of New York, New York, do not have claims that are

appropriately venued in this District and must be dismissed entirely from this case. Dkt. 47 at 22. Specifically, Defendants argue that when there are multiple parties and/or multiple claims in an action, plaintiffs must establish that venue is proper "as to each defendant and as to each claim." *Id.* at 23. Plaintiffs dispute Defendants' assertion, stating the case was filed in accordance with 28 U.S.C. § 1391(e)(1)(C) because MadKudu resides in this District and no real property is involved. Dkt. 48 at 22; Dkt. 39 ¶ 9. Plaintiffs further contend that because the instant action was filed as a nationwide class action and 2nd Street and Hanguang International are appropriately joined, venue is appropriate. Dkt. 48 at 22. In its reply, Defendants argue that because MadKudu's claims are moot, Plaintiffs have not demonstrated that venue is proper and the Court should dismiss 2nd Street and Hanguang International entirely from this case. Dkt. 49 at 14–15.

"Each court faced with the same issue has interpreted 'the plaintiff' to mean 'any plaintiff,' finding that Congress intended to broaden the number of districts in which suits could be brought against government entities." *Sidney Coal Co., Inc. v. Social Sec. Admin.*, 427 F.3d 336, 344–45 (6th Cir. 2005). "For purposes of § 1391(e)(1)(C), the clear weight of federal authority holds that venue is proper in a multi-plaintiff case if *any* plaintiff resides in the District." *Californians for Renewable Energy v. United States EPA*, No. C 15-3293 SBA, 2018 WL 1586211, at *19 (N.D. Cal. Mar. 30, 2018). Indeed, "requiring every plaintiff in an action against the federal government or an agent thereof to independently meet section 1391(e)'s standards would result in an unnecessary multiplicity of litigation." *Exxon Corp. v. F.T.C.*, 588 F.2d 895, 898 (3d Cir. 1978), *overruled in part on other grounds by Reifer v. Westport Ins. Corp.*, 751 F.3d 129 (3d Cir. 2014).

As stated above, the Court has denied Defendants' motion to dismiss pursuant to Rule 12(b)(1) based on mootness regarding MadKudu and Quick Fitting's claims and MadKudu remains one of the named Plaintiffs in this action. Because MadKudu resides in the Northern District of California and no real property is involved in this action, venue is proper before this Court. *See* 28 U.S.C. § 1391(e)(1); *Californians for Renewable Energy*, 2018 WL 1586211, at *5–6 (finding that only one Plaintiff must reside within the forum district for venue purposes); *Mosleh v. Pompeo*, No. 1:19-cv-00656-LJO-BAM, 2019 WL 2524407, at *1 (E.D. Cal. June 19, 2019) (finding venue was proper before the Court because at least one plaintiff resided in that district); Dkt. 39 ¶ 9.

Accordingly, Defendants' motion to dismiss pursuant to Rule 12(b)(3) is **DENIED**.

V. CONCLUSION

For the reasons discussed, the motion to sever and motion to dismiss are **DENIED**.

SO ORDERED.

Dated: September 14, 2020

SUSAN VAN KEULEN
United States Magistrate Judge