

FILED

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CLERK US DIST COURT
EASTERN DISTRICT CALIF

BY *[Signature]*

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MARTHA RIVERA, et al.,)
Plaintiffs, >

v.

NIBCO, INC., et al.,)
Defendants. >

CV F 99-6443 AWI SMS
ORDER ENTERING
FINDINGS AS TO
DECEMBER 21,2001 ORDER
AND GRANTING MOTION TO
CERTIFY ORDER FOR
INTERLOCUTORY APPEAL

This is an employment discrimination action. On June 18,2001, the Magistrate Judge entered an Order Granting Plaintiffs Motion for Protective Order. Defendants filed a motion for reconsideration of the Magistrate Judge's order, which the court denied in an order entered December 21,2001. Defendants now move for an order amending the order of December 21,2001, to state that the order involves a controlling question of law as to which there are substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of this litigation. Defendants also move the court to certify the amended order for interlocutory appeal pursuant to 28 U.S.C. section 1292(b).

The controlling statute, 28 U.S.C. section 1292(b), provides as follows:

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a

1 controlling question of law as to which there is substantial ground for difference of
2 opinion and that an immediate appeal from the order may materially advance the
3 ultimate termination of the litigation, he shall so state in writing in such order. The
4 Court of Appeals which would have jurisdiction of an appeal of such action may
5 thereupon, in its discretion, permit an appeal to be taken from such order, if
6 application is made to it within ten days after the entry of the order: Provided,
7 however, That application for an appeal hereunder shall not stay proceedings in the
8 district court unless the district judge or the Court of Appeals or a judge thereof shall
9 so order.

10 In In re Cement Antitrust Litigation, 673 F.2d 1020, 1026 (9th Cir. 1982) the Court of
11 Appeals for the Ninth Circuit held that the certification requirements of the statute are “(1)
12 that there be a controlling question of law, (2) that there be substantial grounds for difference
13 of opinion, and (3) that an immediate appeal may materially advance the ultimate termination
14 of the litigation.”

15 “[A]11 that must be shown in order for a question to be ‘controlling’ is that resolution
16 of the issue on appeal could materially affect the outcome of litigation in the district court.”

17 Id. The court finds that in the present case, the court’s order of December 21,2001,
18 addresses the issue of to what extent Defendants can determine each Plaintiffs potential
19 remedies in this case through the discovery process. The outcome of this issue affects the
20 remedies to which Plaintiffs may be entitled should they prevail. The court finds, therefore,
21 that the resolution of the issue could materially affect the outcome of this litigation.

22 The court further finds that there is substantial ground for a difference of opinion in
23 this case. Specifically, there is no Ninth Circuit authority addressing the issue of whether the
24 Immigration Reform and Control Act (“IRCA”) prohibits defendants from inquiring into the
25 legality of plaintiffs’ working in the United States through the civil discovery process and
26 whether the IRAC prohibits Defendants from applying the after-acquired evidence doctrine to
27 determine Plaintiffs’ legal remedies.


28 Finally, the court finds that an immediate appeal of the court’s order of December 21,
2001, will speed the final resolution of this lawsuit. The resolution of the issues in dispute
will determine Plaintiffs’ ability to recover on their claims for front pay and reinstatement,

one of their primary claims in this action. Thus, resolution of the issues will greatly facilitate the efficient handling of this case. Further, Defendants estimate that the trial in this case will last three to four months, and anticipate appealing the court's Order of December 21, 2001, after final judgment, if necessary. In the event that the Court of Appeals reverses this court's decision, discovery will have to be reopened and a significant amount of time and resources will have been wasted in trying the case. Finally, Defendants' suggest that appellate resolution of the extent that they can inquire about Plaintiffs' alleged damages could encourage a settlement.

Based on the foregoing, the court HEREBY CERTIFIES its December 21, 2001 order for interlocutory appeal pursuant to 28 U.S.C. section 1292(b). The court denies as moot Defendants' request to amend the order of December 21, 2001.

IT IS SO ORDERED.

DATED: J - - - J - 0 2



ANTHONY W. ISHII
UNITED STATES DISTRICT JUDGE

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United States District Court
for the
Eastern District of California
May3, 2002

* * CERTIFICATE OF SERVICE * *

1:99-cv-06443

Rivera

v.

Nibco Inc

the undersigned, hereby certify that I am an employee in the Office of
be Clerk, U.S. District Court, Eastern District of California.

hat on May3, 2002, I SERVED a true and correct, copy(ies) of
he attached, by placing said copy(ies) in a postage paid envelope
ddressed to the person(s) hereinafter listed, by depositing said
nvelope in the U.S. Mail, by placing said copy(ies) into an inter-office
elivery receptacle located in the Clerk's office, or, pursuant to prior
ut'- rization by counsel, via facsimile.

Donya C Fernandez

AWI SMS

Employment Law Center
Legal Aid Society of San Francisco
1663 Mission Street
Suite 400
San Francisco, CA 94103

Christopher Vincent Ho
Employment Law Center
Legal Aid Society of San Francisco
1663 Mission Street
Suite 400
San Francisco, CA 94103

William J Smith
Richtel and Smith
2350 West Shaw Avenue
Suite 154
Fresno, CA 93711

Marielena Hincapie
National Immigration Law Center
1212 Broadway
Suite 1400
Oakland, CA 94612-1816

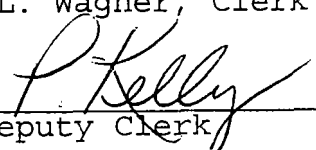
Alan Lawrence Schlosser
American Civil Liberties Union
Northern California
1663 Mission Street
Suite 460
San Francisco, CA 94103

Joannie Chang
Asian Law Caucus
939 Market Street
Suite 201
San Francisco, CA 94103

Howard Alan Sagaser
Sagaser Franson and Jones
PO Box 1632
2445 Capitol Street
Second Floor
Fresno, CA 93717-1632

Jack L. Wagner, Clerk

BY:


Deputy Clerk

Marielena Hincapie
National Immigration Law Center
1212 Broadway
Suite 1400
Oakland, CA 94612-1816

Re: 1:99-cv-06443
